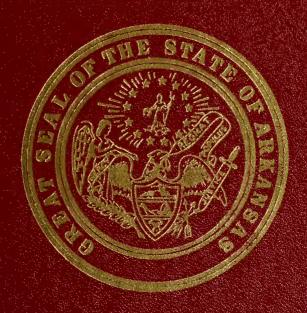
# ARKANSAS CODE OF 1987 ANNOTATED

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# ARKANSAS CODE OF 1987 ANNOTATED



# **VOLUME 11A**

1998 Replacement

# TITLE 14: LOCAL GOVERNMENT (CHAPTERS 104-182)

Prepared by the Editorial Staff of the Publisher

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# Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 1997 Regular Session. Annotations are to the following sources:

Arkansas Advance Reports through 330 Ark. 497 and 59 Ark. App. 162.

Federal Supplement through Volume 974, p. 790.

Federal Reporter 3rd Series through Volume 124, p. 1482.

United States Supreme Court Reports, Lawyers' Edition, 2nd Series through Volume 138, p. 1034.

Bankruptcy Reporter through Volume 213, p. 49. Arkansas Law Notes through the 1997 Edition.

Arkansas Law Review through Volume 49, p. 670.

University of Arkansas at Little Rock Law Journal through Volume 19, p. 540.

# Titles of the Arkansas Code

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# User's Guide

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of Volume 1 of the Code.



# TITLE 14

# LOCAL GOVERNMENT

(CHAPTERS 1-53 IN VOLUME 9; CHAPTERS 54-103 IN VOLUME 10; CHAPTERS 183-295 IN VOLUME 11B; CHAPTERS 296-387 IN VOLUME 12)

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[Reserved]

# SUBTITLE 7. WATER AND SOIL IMPROVEMENT DISTRICTS

# CHAPTER 114 GENERAL PROVISIONS

#### SECTION.

14-114-101. Conflict of regulations.

14-114-102. Definitions — Financial statement.

# 14-114-101. Conflict of regulations.

In the event that the regulations of water and soil improvement districts under subtitle 7 of title 14 of the Code conflict, and in the event that the water and soil improvement districts are unable to resolve the conflict, the Arkansas Soil and Water Conservation Commission shall have all powers necessary to resolve the conflict including the power to require any district to modify or rescind any regulation in conflict.

History. Acts 1989, No. 618, § 3.

# 14-114-102. Definitions — Financial statement.

- (a) As used in this section, unless the context otherwise requires:
- (1) "Commission" means the Arkansas Soil and Water Conservation Commission: and
- (2) "District" means all levee, drainage, irrigation, watershed, and river impoundment districts.

(b) Financial reporting.

- (1) On or before March 1 of each year, each district shall file with the county clerk where the majority of lands in a district are located a financial statement as of the preceding December 31.
  - (2) The financial statements shall include, but not be limited to, the

following:

(A) A statement of revenues, expenses, and fund balances;

(B) A balance sheet:

(C) A statement of the cash on hand as of January 1 of the year for which the report is made, together with all other assets of the district;

(D) The total receipts for the preceding year;

(E) The disbursements for administration, construction, and maintenance for bonds redeemed and for interest paid on outstanding bonds: and

(F) Interest due on outstanding bonds, together with all other

indebtedness of the district.

- (3) Each district's accounts shall be open for inspection according to the rules governing freedom of information as set forth in § 25-19-101 et seq.
- (4) Failure of an official to perform the duties and acts required herein shall be a violation punishable by a fine of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000).

History. Acts 1993, No. 1175, §§ 1, 2.

# CHAPTER 115

# INTERSTATE WATERSHED COOPERATION ACT

SECTION. 14-115-101. Title. SECTION. 14-115-102. Purpose — Construction. SECTION.

14-115-103. Definitions.

14-115-104. Authority to cooperate with state and federal govern-

ments.

14-115-105. Contents of agreements be-

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tween Arkansas and an-

other state.

14-115-106: Raising funds to carry out obligations under tracts entered.

Preambles. Acts 1967, No. 31 contained a preamble which read: "Whereas, the United States of America under and by virtue of the several acts of Congress, active by and through its various departments and agencies, is authorized to cooperate with and furnish financial assistance to the states and local public organizations in the execution of plans and projects for watershed protection, prevention of erosion, flood water and sediment damage and the conservation, development, utilization, and disposal of water; and

"Whereas, in order to obtain such federal assistance, it is necessary that the local organization have the requisite power and authority with respect to providing the necessary lands, easements, and rights-of-way, for financing the local share of the installation cost and to operate and maintain the works so installed: and

"Whereas, under existing laws local organizations in this State do not have authority to participate in such projects involving works of improvements which are located partly within and partly without this State; and

"Whereas, it is desirable that the local organizations in this State be empowered

to participate in such interstate projects and enter into agreements with state and local organizations of adjoining states for the construction, operation, and maintenance of works of improvement within and without this State in order to obtain and receive the benefits that will accrue by reason of such improvements to lands and other property within the boundaries of this State....

Effective Dates. Acts 1967, No. 31, § 8: approved Feb. 2, 1967. Emergency clause provided: "It is hereby found and declared that under existing laws, improvement districts of this State are unable to participate in interstate watershed projects; that there is an urgent need for the protection afforded to lands and property of this State by participating in and carrying out of such projects; that the enactment hereof will enable improvement districts of this State to obtain and receive the financial and other assistance available under national legislation for preserving and protecting the State's land and water resources; therefore, an emergency is declared to exist and this act, being necessary for the protection of the public peace, health and safety of this State, shall take effect and be in force from and after its passage."

#### RESEARCH REFERENCES

ALR. Liability for diversion of surface water by raising surface level of land, 88 ALR 4th 891.

Ark. L. Rev. Lex Aquae Arkansas, 27 Ark. L. Rev. 429.

# 14-115-101. Title.

This chapter may be known as the "Interstate Watershed Cooperation Act."

**History.** Acts 1967, No. 31, § 1; A.S.A. 1947, § 21-1801.

# 14-115-102. Purpose — Construction.

(a) The purpose of this chapter is to enable existing improvement districts or any improvement districts to be created, to make, or contribute to the cost of, improvements for the purpose of flood prevention and control, preventing erosion; floodwater, and sediment damage, and of furthering the conservation, development, utilization,

and disposal of water in interstate watershed projects.

(b) The provisions of this chapter shall not be construed to impair or limit in any way the interstate rights of the federal government or any of its departments or agencies, with respect to its jurisdiction, management, or control over waters or other matters or projects of an interstate nature. It is the purpose and intention of this chapter that neither the powers granted herein nor any agreement pursuant hereto shall interfere directly or indirectly with the federal jurisdiction or authority.

(c) None of the additional powers granted by this chapter shall be exercised except for the purpose of participating in programs authorized by the Congress of the United States relating to the control and prevention of floodwater and sediment damages and the conservation,

development, utilization, and disposal of water.

History. Acts 1967, No. 31, § 3; A.S.A. 1947, § 21-1803.

# 14-115-103. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Interstate watershed project" means any undertaking in cooperation with the federal government for preparing and carrying out works of improvement for the control and prevention of floodwater, erosion, and sediment damage, and the conservation, development, utilization, and disposal of water lying wholly or in part outside the boundaries of this state, the installation of which will benefit lands and property in this state:

(2) "Improvement district" or "district" includes drainage, soil or water conservation, irrigation, levee, flood control, or other special improvement district, and all other political subdivisions including incorporated cities and towns;

(3) "Bonds" means any notes, bonds, or other obligations without regard to form or source of payment, issued by any district pursuant to

any law of this state:

(4) "Taxes" means general taxes levied on an ad valorem basis or special benefit taxes levied pursuant to the laws governing improvement districts.

History. Acts 1967, No. 31, § 2; A.S.A. 1947, § 21-1802.

# 14-115-104. Authority to cooperate with state and federal governments.

With respect to planning, constructing, operating, and maintaining works of improvement in the interstate watershed projects, the governing authority of any improvement district is authorized to cooperate and enter into agreements with, and to furnish financial and other assistance to, and receive financial and other assistance from:

(1) The federal government, or any department or agency thereof;

(2) The state government of other states; and

(3) Other improvement districts in this state and in adjoining states.

**History.** Acts 1967, No. 31, § 4; A.S.A. 1947, § 21-1804.

# 14-115-105. Contents of agreements between Arkansas and another state.

(a) Any such agreement between a district in this state and a district in an adjoining state shall contain as a minimum the following:

(1) A statement of the obligations of each district as to the installation of the works of improvement and the amount or proportionate share of the nonfederal installation costs to be borne by each district;

(2) A statement of the obligations of each district as to the operation and maintenance of the works of improvement lying within each district and the amount or proportionate part of the cost of the operation and maintenance to be borne by each district;

(3) The obligation of each district to pay a proportionate part of any damages which may be recovered against either district resulting from the injury to, or taking of, lands or other property necessary for carrying

out the works of improvement;

(4) A statement that any installation funds remaining after completion of the work and payment of all costs shall be divided and returned to each district in the same proportion that each contributed to the cost.

(b) However, no such agreement with an adjoining state or district of that state shall be inconsistent with the Constitution of the United States of America, or of either state, for the carrying out of the proposed works of improvement.

**History.** Acts 1967, No. 31, § 5; A.S.A. 1947, § 21-1805.

# 14-115-106. Raising funds to carry out obligations under contracts entered.

The governing authority of any improvement district is authorized to appropriate sums, issue bonds, and levy taxes in the manner and for the purposes provided by the law under which it is organized to raise funds as necessary to fulfill the district's obligations under the terms of any agreement entered into under this chapter.

**History.** Acts 1967, No. 31, § 6; A.S.A. 1947, § 21-1806.

# **CHAPTER 116**

# REGIONAL WATER DISTRIBUTION DISTRICT ACT

#### SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. ESTABLISHMENT OF WATER DISTRICTS.
- 3. Board of Directors.
- 4. OPERATION OF WATER DISTRICTS.
- 5. IMPROVEMENT OF WATER DISTRICTS.
- 6. Improvement Plan Assessments.
- 7. Bonds.
- 8. APPLICABILITY OF CHAPTER.

# RESEARCH REFERENCES

Ark. L. Rev. Looney, Modification of Arkansas Water Law: Issues and Alternatives, 38 Ark. L. Rev. 221.

Looney, Enhancing the Role of Water Districts in Groundwater Management and Surface Water Utilization in Arkansas, 48 Ark, L. Rev. 643. **UALR L.J.** Survey of Arkansas Law, Public Law, 1 UALR L.J. 230.

Trelease, A Water Management Law For Arkansas, 6 UALR L.J. 369.

Comment, Arkansas at the Water Crossroads: Regulations or Solutions?, 7 UALR L.J. 401.

# Subchapter 1 — General Provisions

SECTION.

14-116-101. Title.

14-116-102. Purpose.

14-116-103. Definitions.

14-116-104. Chapter controlling.

14-116-105. Construction.

SECTION.

14-116-106. Joint projects.

14-116-107. Applicability of Regional Water Distribution District

Preambles. Acts 1957, No. 114, contained a preamble which read: "Whereas, the United States under and by virtue of several acts of Congress has authorized, and may by similar acts authorize, the Corps of Engineers of the Department of the Army and/or the Chief of Engineers of the United States Army to discuss plans and to execute projects for the construction of multipurpose reservoirs for the purpose of flood control and water supply on rivers and tributaries of/or bordering on this State: and,

"Whereas, the Congress of the United States has announced a policy in adopting and authorizing such projects that no federal funds can be expended to provide water storage capacity for industrial, municipal and agricultural water supply purposes in said reservoirs until some authorized local agency shall execute to the United States a contract of assurance that such local interest will, (a) make use of said water supply and (b) pay such additional costs of said reservoir as may be allocated to water supply; and,

"Whereas, no work can be done on some of the projects which have been adopted and authorized by the Congress of the United States, and no projects hereafter authorized by Congress, for the reason that there is no law in this State under

which an individual water district can conveniently be organized over the large

area required; and,

"Whereas, in instances now existing and which will exist in the future, the State and counties in the affected area to be benefited by said improvements have been deprived, and will continue to be deprived, of receiving and participating in said water supply to be realized from said projects, and that it is to the interest of the State that some provision be made for the organization and creation of such water districts, with full power and authority to give such assurances to the United States, and with full power and authority to comply with the terms and provisions of said acts of Congress, to acquire title to and use of water stored in said reservoirs and to sell and distribute same for the use and benefit of the people of the State of Arkansas: Now Therefore ...."

Effective Dates. Acts 1957, No. 114, § 17: approved Feb. 28, 1957. Emergency clause provided: "It is hereby ascertained by the General Assembly of the State of Arkansas that there are no present laws concerning the organization, formation and operation of public, nonprofit regional water distribution districts to make use of a water supply available, and to be available, in multipurpose reservoirs constructed by, or under the supervision of, the Corps of Engineers of the Department of the Army on rivers and tributaries of/or bordering on this State, and to pay such additional costs of said reservoirs as may be allocated to water supply. And it is further ascertained that no work can be done on some of the projects which have been adopted and authorized by the Congress of the United States, or which may hereafter be authorized by Congress, for the reason that there are no laws in this State under which nonprofit regional water distribution districts can conveniently be organized over a large area required, and that the State will lose the profit of such projects unless this Act is passed and becomes effective immediately. It is therefore declared that this Act is necessary for the immediate preservation of the public peace, health and safety and an emergency is declared to exist, and this Act shall take effect and be in full force from

and after its passage."

Acts 1963, No. 14, §§ 11-17, 20: Feb. 8, 1963. Sections 11-17 effective April 1, 1963. Emergency clause provided: "It has been found that notwithstanding the fact that the Commission will not have the functions performable by it hereunder until April 1, 1963, it is necessary that immediate action be taken by the Governor to appoint, and by the Senate to confirm the appointment of, the members of the Commission in order that the Commission may organize and begin to prepare its plan of operations so that there may be no disruption of service on and after that date, and that only by the immediate operation of this act may such condition be obviated. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval."

Acts 1975, No. 208, § 6: Feb. 18, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that water districts created under Act 114 of 1957 are authorized to individually undertake projects to utilize a water supply available as a result of multi-purpose reservoirs constructed by the United States Corps of Engineers; that it would be mutually beneficial to permit water districts created under Act 114 of 1957 to jointly and cooperatively undertake such projects and that this Act is immediately necessary to permit such cooperative or joint action by such water districts. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage

and approval."

# 14-116-101. Title.

This chapter may be cited as "The Regional Water Distribution District Act."

**History.** Acts 1957, No. 114, § 1; A.S.A. 1947, § 21-1401.

## **CASE NOTES**

Cited: Hale v. Southwest Ark. Water Dist., 244 Ark. 647, 427 S.W.2d 14 (1968).

# 14-116-102. Purpose.

Public nonprofit regional water distribution districts may be organized under this chapter for any one (1) or more of the following purposes:

(1) Acquisition of water from wells, lakes, rivers, tributaries, or streams of or bordering this state or from existing reservoirs heretofore created by the construction of dams by or under the direction and

supervision of the United States Army Corps of Engineers;

(2) Acquisition of water, water storage facilities, and the storage of the water in reservoirs created by the construction of multipurpose dams by or under the direction and supervision of the United States Army Corps of Engineers, or by the water district with federal financial or other assistance furnished by the United States Secretary of Agriculture under the provisions of the Watershed Protection and Flood Prevention Act or any other federal law;

(3) Purification, treatment, and processing of the water;

(4) Furnishing the water to persons desiring it;

(5) Assisting in the installation and operation of the water and transportation facilities of persons who are furnished water by the water district and the acquisition, supply, or installation of equipment necessary therefor;

(6) Transportation and delivery of the water to persons furnished it

by the water district.

**History.** Acts 1957, No. 114, § 3; 1963, No. 120, § 2; 1973, No. 137, § 1; A.S.A. 1947, § 21-1403.

U.S. Code. The Watershed Protection

and Flood Prevention Act, referred to in this section, is codified as 16 U.S.C. §§ 1001-1007.

#### **CASE NOTES**

ANALYSIS

Acquisition of water. Authorized uses.

## Acquisition of Water.

This section authorizes the districts to acquire water from wells, lakes, rivers,

tributaries, or streams of or bordering this state, in addition to water from federal impoundments. Lyon v. White River-Grand Prairie Irrigation Dist., 281 Ark. 286, 664 S.W.2d 441 (1984).

Four cities undertaking to obtain a supplementary water supply from a water district had authority, in that all each city sought was a dependable water supply, to enter into an agreement to obtain a water supply from the district, such district being authorized to contract with the Corps of Engineers for the acquisition of water rights in federal impoundments. Hink v. Board of Dirs., 235 Ark. 107, 357 S.W.2d 271 (1962).

## Authorized Uses.

This chapter not only authorizes the establishment of water distribution districts for municipal and industrial uses, but also authorizes their establishment for agricultural or other purposes as well. Lyon v. White River-Grand Prairie Irrigation Dist., 281 Ark. 286, 664 S.W.2d 441 (1984).

# 14-116-103. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Acquire" means and includes construct, acquire by purchase, lease, devise, gift, or other mode of acquisition;

(2) "Board" means a board of directors of a regional water distribu-

tion district organized under this chapter;

- (3) "Commission" means the Arkansas Soil and Water Conservation Commission;
- (4) "Court" means the circuit court creating the water district pursuant to § 14-116-201 et seq.;
- (5) "Improvement project area" means an area established by the court within the district for which an approved improvement plan has been developed and for which assessment of benefits may be made to pay the cost of development, construction, operation, and maintenance of the improvement plan and its works of improvement;

(6) "Improvement plan" means a plan developed by a water district to carry out any of the purposes contained in § 14-116-102 or the ancillary benefits derived therefrom within an improvement project

area;

(7) "Obligation" includes bonds, notes, debentures, interim certificates or receipts, and all other evidences of indebtedness issued by a regional water distribution district formed under this chapter;

(8) "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state agency, state or

political subdivision thereof, municipality, or any body politic;

- (9) "Reservoir" means any impoundment of water through the construction of a dam by or under the direction and supervision of the United States Army Corps of Engineers, or by the water district, with federal financial or other assistance furnished by the United States Secretary of Agriculture under the provisions of the Watershed Protection and Flood Prevention Act or any other federal law;
- (10) "Water district" or "district" means a nonprofit regional water distribution district organized pursuant to the provisions of this chapter:
- (11) "Works of improvement" means any facilities developed by the water district as district as part of an improvement plan which need not be located exclusively within a proposed improvement project area or within the water district.

**History.** Acts 1957, No. 114, § 2; 1963, No. 14, § 16; 1963, No. 120, § 1; A.S.A. 1947, § 21-1402; Acts 1995, No. 838, § 1.

Amendments. The 1995 amendment renumbered the sections alphabetically; inserted "the" in present (3); inserted

present (4)-(6) and (11); and inserted "or 'district'" in (10).

U.S. Code. The Watershed Protection and Flood Prevention Act, referred to in this section, is codified as 16 U.S.C. §§ 1001-1007.

# 14-116-104. Chapter controlling.

This chapter is complete in itself and shall be controlling. The provisions of any other law of this state, except as provided in this chapter, shall not apply to a water district organized under this chapter.

**History.** Acts 1957, No. 114, § 16; A.S.A. 1947, § 21-1415.

# **CASE NOTES**

# Joint Projects.

This chapter, authorizing the creation of water distribution districts, is a later statute than § 14-234-507 and is clearly not affected by its provisions as to the joinder

of two or more municipalities in the acquiring of a water supply. Hink v. Board of Dirs., 235 Ark. 107, 357 S.W.2d 271 (1962).

# 14-116-105. Construction.

This chapter shall be construed liberally. The enumerating of any object, purpose, power, manner, method, or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

**History.** Acts 1957, No. 114, § 14; A.S.A. 1947, § 21-1414.

# 14-116-106. Joint projects.

- (a) It is the intent and purpose of this section and § 25-20-103 to permit any two (2) or more water districts created under this chapter to jointly and cooperatively undertake and carry out any purpose or project which a single water district created under this chapter is authorized to undertake and carry out. It is further the intent that any agreement entered into by two (2) or more water districts pursuant to the authority granted in this section to undertake a joint or cooperative project shall, so far as practical, be entered into in conformity with the requirements and provisions of the Interlocal Cooperation Act, § 25-20-101 et seq.
- (b) Any two (2) or more water districts created under this chapter are authorized to enter into an agreement or agreements for the joint or cooperative exercise of any power or authority or for the undertaking of any project which a single water district created under this chapter could exercise or undertake.
- (c) Any agreement or agreements between two (2) or more water districts pursuant to the authority granted in this section and § 25-20-

103 shall, so far as practicable, be entered into in accordance with the provisions of the Interlocal Cooperation Act, § 25-20-101 et seq. Any power or authority exercised or any project undertaken jointly or cooperatively by the agreeing water districts pursuant to the agreement shall be exercised, undertaken, and consummated in accordance with the provisions of this chapter.

**History.** Acts 1975, No. 208, §§ 1-3, 5; A.S.A. 1947, §§ 21-1416 — 21-1418.

# 14-116-107. Applicability of Regional Water Distribution District Act.

The provisions of § 14-116-101 et seq., the Regional Water Distribution District Act, as now or hereafter amended, shall not be applicable to agencies of the State of Arkansas or of political subdivisions of the state, nor to lands owned by such agencies.

History. Acts 1995, No. 838, § 10.

# SUBCHAPTER 2 — ESTABLISHMENT OF WATER DISTRICTS

SECTION.

14-116-201. Authority to petition for district establishment.

14-116-202. Contents of petition.

14-116-203. Petition — Land in more than one county.

14-116-204. Commission review of petition.

SECTION.

14-116-205. Notice of hearing. 14-116-206. Hearing — Appeal.

14-116-207. Exclusion of land for irrigation purposes.

Preambles. Acts 1957, No. 114, contained a preamble which read: "Whereas, the United States under and by virtue of several acts of Congress has authorized, and may by similar acts authorize, the Corps of Engineers of the Department of the Army and/or the Chief of Engineers of the United States Army to discuss plans and to execute projects for the construction of multipurpose reservoirs for the purpose of flood control and water supply on rivers and tributaries of/or bordering on this State: and,

"Whereas, the Congress of the United States has announced a policy in adopting and authorizing such projects that no federal funds can be expended to provide water storage capacity for industrial, municipal and agricultural water supply purposes in said reservoirs until some authorized local agency shall execute to the United States a contract of assurance that

such local interest will, (a) make use of said water supply and (b) pay such additional costs of said reservoir as may be allocated to water supply; and,

"Whereas, no work can be done on some of the projects which have been adopted and authorized by the Congress of the United States, and no projects hereafter authorized by Congress, for the reason that there is no law in this State under which an individual water district can conveniently be organized over the large area required; and,

"Whereas, in instances now existing and which will exist in the future, the State and counties in the affected area to be benefited by said improvements have been deprived, and will continue to be deprived, of receiving and participating in said water supply to be realized from said projects, and that it is to the interest of the State that some provision be made for

the organization and creation of such water districts, with full power and authority to give such assurances to the United States, and with full power and authority to comply with the terms and provisions of said acts of Congress, to acquire title to and use of water stored in said reservoirs and to sell and distribute same for the use and benefit of the people of the State of Arkansas: Now Therefore ....'

Effective Dates. Acts 1957, No. 114, § 17: approved Feb. 28, 1957. Emergency clause provided: "It is hereby ascertained by the General Assembly of the State of Arkansas that there are no present laws concerning the organization, formation and operation of public, nonprofit regional water distribution districts to make use of a water supply available, and to be available, in multipurpose reservoirs constructed by, or under the supervision of, the Corps of Engineers of the Department

of the Army on rivers and tributaries of/or bordering on this State, and to pay such additional costs of said reservoirs as may be allocated to water supply. And it is further ascertained that no work can be done on some of the projects which have been adopted and authorized by the Congress of the United States, or which may hereafter be authorized by Congress, for the reason that there are no laws in this State under which nonprofit regional water distribution districts can conveniently be organized over a large area required, and that the State will lose the profit of such projects unless this Act is passed and becomes effective immediately. It is therefore declared that this Act is necessary for the immediate preservation of the public peace, health and safety and an emergency is declared to exist, and this Act shall take effect and be in full force from and after its passage."

# 14-116-201. Authority to petition for district establishment.

When there is water available for industrial, municipal, or agricultural irrigation water supply purposes from wells, lakes, rivers, tributaries, or streams of this state or bordering on this state or from reservoirs heretofore created by the construction of multipurpose dams by or under the direction and supervision of the United States Army Corps of Engineers on any of the rivers, tributaries, or streams of or bordering on this state, or when the Congress of the United States of America has enacted a law authorizing the construction of a reservoir by or under the supervision and direction of the United States Army Corps of Engineers on any of the rivers, tributaries, or streams of or bordering on this state, or when a proposed reservoir on any stream of this state is to be constructed by a water district established under this chapter with federal or other assistance furnished by the United States Secretary of Agriculture under the provisions of the Watershed Protection and Flood Prevention Act or any other federal law, then one hundred (100) or more qualified voters residing and owning lands situated within the boundaries of the water district proposed to be established under the provisions of this chapter may petition the circuit court in the county to establish a water district for the purposes set out in this section.

**History.** Acts 1957, No. 114, § 4; 1963, No. 120, § 3; 1973, No. 137, § 2; A.S.A. 1947, § 21-1404; Acts 1995, No. 838, § 2.

Amendments. The 1995 amendment substituted "and owning lands" for "or owning lands" near the end; and made stylistic changes.

U.S. Code. The Watershed Protection and Flood Prevention Act, referred to in this section, is codified as 16 U.S.C. §§ 1001-1007.

# CASE NOTES

Purposes.

This section not only authorizes the establishment of water distribution districts for municipal and industrial uses, but also authorizes their establishment

for agricultural or other purposes as well. Lyon v. White River-Grand Prairie Irrigation Dist., 281 Ark. 286, 664 S.W.2d 441 (1984).

# 14-116-202. Contents of petition.

The petition shall contain:

(1) An accurate description of the territory which it is proposed shall be embraced within the water district, and a map of the territory shall

be attached to the petition as an exhibit thereto;

(2) A brief and concise statement describing the water source, whether it is wells, lakes, streams, a reservoir heretofore created by the construction of a dam, or a proposed reservoir authorized by the Congress of the United States of America or a proposed reservoir to be constructed by the water district with federal financial or other assistance furnished by the United States Secretary of Agriculture under the provisions of the Watershed Protection and Flood Prevention Act or any other federal law;

(3) A brief and concise statement showing the necessity for forming and operating the proposed water district, describing the benefits to be received therefrom by the residents and property owners in the territory proposed to be embraced in the water district, and if the water district proposes to use project improvement plans and assessments, a statement that such petitioners are aware of the power of the district under this chapter to levy taxes;

(4) The proposed name for the water district;

(5) The proposed location of the principal office of the water district;

(6) Other and additional information appropriate and useful in support.

**History.** Acts 1957, No. 114, § 4; 1963, No. 120, § 3; 1973, No. 137, § 2; A.S.A. 1947, § 21-1404; Acts 1995, No. 838, § 3.

Amendments. The 1995 amendment added the language beginning "and if the

water district proposes" in (3).

U.S. Code. The Watershed Protection and Flood Prevention Act, referred to in this section, is codified as 16 U.S.C. §§ 1001-1007.

# 14-116-203. Petition — Land in more than one county.

(a) The territory proposed to be embraced within the water district may include lands in one (1) or more counties.

(b) If more than one (1) county is involved, the petition shall be filed in the circuit court of the county having the greatest acreage within the boundaries of the proposed water district.

**History.** Acts 1957, No. 114, § 4; 1963, No. 120, § 3; 1973, No. 137, § 2; A.S.A. 1947, § 21-1404.

# 14-116-204. Commission review of petition.

(a) Upon the filing of the petition in the office of the circuit clerk for the county or any one (1) of the counties where the reservoir or other water source as referred to in § 14-116-102(1) is located or to be located, in whole or in part, the clerk shall prepare a certified copy of the petition and transmit the copy to the commission within five (5) days from the date of the filing of the petition.

(b) Upon receipt of the certified copy, the commission shall institute an investigation of the proposed district and its territory and purposes. The commission shall, within thirty (30) days after receipt of the copy, transmit a written report of its findings on the petition to the clerk of

the circuit court.

(c) The report of the commission shall include, but not be limited to:

(1) A finding as to how the proposed boundaries of the water district conflict with the boundaries of any existing water district of which the

commission may have supervisory jurisdiction;

(2) A finding as to whether the statement of purposes contained in the petition conforms with the intent and purposes of this chapter as applied to the area proposed to be included within the boundaries of the water district;

(3) A finding as to whether the organization of the proposed water district would promote the general welfare and be conducive to the

purposes of this chapter;

(4) Any conditions, revisions, including revisions of area, or limitations which the commission deems necessary to the organization of the water district, the conditions, revisions, or limitations to be stated as changes in the petition. These changes shall thereupon become a part of the petition and be deemed effective without another amendment thereto.

**History.** Acts 1957, No. 114, § 5; 1973, No. 137, § 3; A.S.A. 1947, § 21-1405.

# **CASE NOTES**

Report of Findings.

This section, which requires that the Soil and Water Conservation Commission institute an investigation and transmit a written report of its findings to the circuit court clerk, establishes prima facie that the commission, and only the commission, is authorized to prepare the report. Lyon v. White River-Grand Prairie Irrigation Dist., 281 Ark. 286, 664 S.W.2d 441 (1984).

# 14-116-205. Notice of hearing.

(a) Within thirty (30) days after the report of the commission has been filed in the office of the circuit clerk, the petition shall be presented to the judge of the circuit court of the county, either in term or vacation, and the court shall thereupon enter its order:

(1) Setting a hearing upon the petition for a day certain; and

(2) Directing the clerk of the court to give notice of the hearing by publication for two (2) consecutive weeks in some newspaper or news-

papers having a general circulation in each of the counties containing lands embraced within the boundaries of the proposed water district.

(b) The notice shall contain:

- (1) A concise statement describing the purpose of the hearing;
- (2) A description of the territory to be embraced within the water district;
  - (3) A concise statement of the action of the commission;
- (4) A warning to all persons residing or owning property within the boundaries of the proposed water district to appear upon the date and at the time and place of the hearing to show cause, if any exists, why the petition should not be granted.

**History.** Acts 1957, No. 114, § 5; 1973, No. 137, § 3; A.S.A. 1947, § 21-1405.

# 14-116-206. Hearing — Appeal.

- (a) Upon the date and at the time and place named in the notice, the circuit court shall meet and shall hear all persons who wish to appear and advocate or resist the establishment of the water district. If the court, after being satisfied as to the sufficiency of the petition and the proceedings thereon, finds and deems it to be in the best interests of the persons residing or owning land within the boundaries of the proposed water district that the water district be established under the terms of this chapter, then the court shall enter its order establishing a water district embracing the territory described in the petition, subject to all the terms and provisions in this chapter and designating a name for the water district.
- (b) The order establishing the water district shall empower the water district, to the full extent that the State of Arkansas can grant that right, the right to acquire absolute title to and use of water stored in any water source as referred to in § 14-116-102 or in the reservoir created, or to be created, by the construction of the dam by, or under the direction and supervision of, the United States Army Corps of Engineers or by the water district with federal financial or other assistance furnished by the United States Secretary of Agriculture under the provisions of the Watershed Protection and Flood Prevention Act, or any other federal law. The water district shall by the order be empowered to enter into contracts of assurances with the United States of America for the storage, procurement, or removal of the water from the reservoir or other such water source. The order establishing the water district shall have all the force and effect of a judgment. Any person aggrieved by the entry of the order by the court may appeal, as in other cases of appeal, to the Supreme Court, from the order within thirty (30) days after the order has been made. If no appeal is taken within that time, the order authorizing and creating the water district shall be deemed conclusive, and any person residing or owning land in the district may in like manner and time appeal from any order refusing to establish the water district.

History. Acts 1957, No. 114, § 6; 1963, No. 120, § 4; 1973, No. 137, § 4; 1983, No. 396, § 1; A.S.A. 1947, § 21-1406.

U.S. Code. The Watershed Protection

and Flood Prevention Act, referred to in this section, is codified as 16 U.S.C. §§ 1001-1007.

# 14-116-207. Exclusion of land for irrigation purposes.

(a) Any owner of real property within the territory of the proposed water district may, at any time before the entry of the order establishing the district or before the entry of the order establishing an improvement project area including such real property, petition the court to exclude his property for agricultural irrigation water uses.

(b) To exclude the property from the district, the court must make

the following determinations:

(1) The property is supplied by adequate agricultural irrigation water from surface sources or other sources; and

(2) The property is not and will not in the future be benefited by the improvements of the proposed water district.

**History.** Acts 1957, No. 114, § 6; 1963, No. 120, § 4; 1973, No. 137, § 4; 1983, No. 396, § 1; A.S.A. 1947, § 21-1406; Acts 1995, No. 838, § 4; 1997, No. 907, § 1.

Amendments. The 1995 amendment rewrote this section.

The 1997 amendment substituted "or" for "and" following "establishing the district" in (a).

# Subchapter 3 — Board of Directors

SECTION.

14-116-301. Members generally — Original appointments.

14-116-302. Members — Terms.

14-116-303. Members - Nomination and election.

14-116-304. Members — Vacancy.

14-116-305. Members — Oath.

14-116-306. Members — Compensation.

14-116-307. Organization.

14-116-308. Meetings.

14-116-309. Powers and duties.

**Preambles.** Acts 1957, No. 114, contained a preamble which read: "Whereas, the United States under and by virtue of several acts of Congress has authorized, and may by similar acts authorize, the Corps of Engineers of the Department of the Army and/or the Chief of Engineers of the United States Army to discuss plans and to execute projects for the construction of multipurpose reservoirs for the purpose of flood control and water supply on rivers and tributaries of/or bordering on this State: and,

"Whereas, the Congress of the United States has announced a policy in adopting and authorizing such projects that no federal funds can be expended to provide water storage capacity for industrial, mu-

nicipal and agricultural water supply purposes in said reservoirs until some authorized local agency shall execute to the United States a contract of assurance that such local interest will, (a) make use of said water supply and (b) pay such additional costs of said reservoir as may be allocated to water supply; and,

"Whereas, no work can be done on some of the projects which have been adopted and authorized by the Congress of the United States, and no projects hereafter authorized by Congress, for the reason that there is no law in this State under which an individual water district can conveniently be organized over the large area required; and,

"Whereas, in instances now existing

and which will exist in the future, the State and counties in the affected area to be benefited by said improvements have been deprived, and will continue to be deprived, of receiving and participating in said water supply to be realized from said projects, and that it is to the interest of the State that some provision be made for the organization and creation of such water districts, with full power and authority to give such assurances to the United States, and with full power and authority to comply with the terms and provisions of said acts of Congress, to acquire title to and use of water stored in said reservoirs and to sell and distribute same for the use and benefit of the people of the State of Arkansas: Now Therefore...."

Effective Dates. Acts 1957, No. 114, § 17: approved Feb. 28, 1957. Emergency clause provided: "It is hereby ascertained by the General Assembly of the State of Arkansas that there are no present laws concerning the organization, formation and operation of public, nonprofit regional water distribution districts to make use of a water supply available, and to be available, in multipurpose reservoirs constructed by, or under the supervision of, the Corps of Engineers of the Department of the Army on rivers and tributaries of/or bordering on this State, and to pay such additional costs of said reservoirs as may be allocated to water supply. And it is further ascertained that no work can be done on some of the projects which have been adopted and authorized by the Congress of the United States, or which may hereafter be authorized by Congress, for the reason that there are no laws in this State under which nonprofit regional water distribution districts can conveniently be organized over a large area required, and that the State will lose the profit of such projects unless this Act is passed and becomes effective immediately. It is therefore declared that this Act is necessary for the immediate preservation of the public peace, health and safety and an emergency is declared to exist, and this Act shall take effect and be in full force from and after its passage."

Acts 1970 (Ex. Sess.), No. 21, § 4: Mar. 13, 1970. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relating to the boards of directors of regional water distribution districts does not assure adequate representation to all areas of such districts; that it is essential to the proper and efficient administration of the business of such water districts that the court creating such districts be given authority to increase the membership of the board of directors of such district to assure proper representation to all areas of the district; that the present law relative to water districts should be clarified to assure that the furnishing of water to consumers outside the district shall not result in increase of the cost of water or other services to members within the district; and that this act is immediately necessary in order to correct the above described inadequacies in the water district law. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

# 14-116-301. Members generally — Original appointments.

(a) The board of directors shall be composed of three (3) qualified voters residing in the district. However, if the district embraces lands in more than one (1) county, then the board of directors shall be composed of three (3) qualified electors who are residents of the district from each of the counties in which lands are embraced in the district. Furthermore, if the court creating a water distribution district finds that a larger number of board members than that provided for above is necessary to afford adequate representation for the various areas of the district, the court may establish a board consisting of a greater number of members than that provided for above. In this case the representa-

tion on the board of directors shall be apportioned to the various areas

of the district in a manner the court deems just and equitable.

(b) When the circuit court has established the district, it shall, within a reasonable time thereafter, appoint the three (3) or more directors of the water district. Upon the expiration of the terms of the directors so appointed, subsequent directors shall be elected as set out in this subchapter by the qualified electors residing in the water district in each county in which there is area included in the district.

**History.** Acts 1957, No. 114, § 7; 1970 (Ex. Sess.), No. 21, § 1; A.S.A. 1947, § 21-1407.

# 14-116-302. Members — Terms.

(a) Each director shall serve for a term of six (6) years and until his successor is duly elected and qualified, except that one (1) of the original directors from each county shall serve for a term of not more than two (2) years, one (1) for a term of not more than four (4) years, and one (1) for a term of not more than six (6) years as determined by the courts. However, if the court finds at any time that it is necessary or desirable that the board be composed of or increased to a greater number than three (3) for each county represented in the district in order to provide proper representation to the various areas of the district, the additional member or members of the enlarged board appointed by the court shall be appointed for terms of office that the court deems necessary to properly provide for staggered terms for the members of the board representing each area of the district.

(b) The term of office of the directors shall expire on December 31 of the year which constitutes the last year of the term of each director.

**History.** Acts 1957, No. 114, § 7; 1970 (Ex. Sess.), No. 21, § 1; A.S.A. 1947, § 21-1407.

# 14-116-303. Members — Nomination and election.

(a) Nominations for directors shall be upon petitions signed by at least fifty (50) qualified electors residing in the area of the district from which the director is to be elected. This petition shall be filed with the county board of election commissioners at least sixty (60) days prior to the general election.

(b) Election of the directors shall be held as a part of the general

election and under the laws governing it.

(c) Any director shall be qualified to succeed himself.

**History.** Acts 1957, No. 114, § 7; 1970 (Ex. Sess.), No. 21, § 1; A.S.A. 1947, § 21-1407.

# 14-116-304. Members — Vacancy.

The directors shall fill any vacancy occurring on the board prior to the expiration of the term of any director by electing a substitute director to serve for the balance of the unexpired term.

**History.** Acts 1957, No. 114, § 7; 1970 (Ex. Sess.), No. 21, § 1; A.S.A. 1947, § 21-1407.

# 14-116-305. Members — Oath.

(a) Each of the original directors and all directors elected thereafter shall take the oath of office required by Arkansas Constitution, Article 19, § 20, and shall also swear that he will not directly or indirectly be interested in any contract made by the board.

(b) Any director failing to take the oath within thirty (30) days after his appointment or election shall be deemed to have declined the appointment or election and his place shall be filled as other vacancies.

(c) All oaths of directors shall be executed in writing and filed in the office of the circuit clerk in the county where the petition is originally filed.

**History.** Acts 1957, No. 114, § 7; 1970 (Ex. Sess.), No. 21, § 1; A.S.A. 1947, § 21-1407.

# 14-116-306. Members — Compensation.

The directors provided for, upon majority vote of the board, may receive the sum of no more than two hundred dollars (\$200) each day as compensation for attending meetings of the board or any of its committees. However, not more than four hundred dollars (\$400) shall be paid to any director for meetings held in any one (1) calendar month, together with the director's reasonable and necessary expenses.

**History.** Acts 1957, No. 114, § 7; 1970 (Ex. Sess.), No. 21, § 1; A.S.A. 1947, § 21-1407; Acts 1987, No. 149, § 1; 1997, No. 709, § 1.

Amendments. The 1997 amendment

substituted "two hundred dollars (\$200)" for "one hundred dollars (\$100)"; and substituted "four hundred dollars (\$400)" for "two hundred dollars (\$200)."

# 14-116-307. Organization.

Immediately upon the appointment of the board of directors, the directors shall meet and organize and shall elect a president, vice president, and secretary-treasurer from their membership and shall adopt bylaws which shall govern their proceedings.

**History.** Acts 1957, No. 114, § 7; 1970 (Ex. Sess.), No. 21, § 1; A.S.A. 1947, § 21-1407.

# 14-116-308. Meetings.

(a) Regular meetings of the board of directors shall be held quarterly in the office of the district on such day as is selected by the board.

(b) Notice of the meeting shall be mailed to each director at least five (5) days prior to the date of the meeting. Special meetings may be held at any time upon waiver of notice of such meeting by all directors or may be called by the president or by any two (2) directors at any time provided that notice in writing, signed by the persons calling any special meeting, shall be mailed to each director at least five (5) days prior to the time fixed for a special meeting.

(c) A majority of the directors shall constitute a quorum for the transaction of business. In the absence of any of the duly elected officers of the district, a quorum at any meeting may select a director to act as

officer pro tem.

(d) Each meeting of the board, whether regular or special, shall be open to the public, and the board shall at no time go into executive session.

**History.** Acts 1957, No. 114, § 7; 1970 (Ex. Sess.), No. 21, § 1; A.S.A. 1947, § 21-1407.

# RESEARCH REFERENCES

Ark. L. Rev. Watkins, Open Meetings Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 268 (1984).

# 14-116-309. Powers and duties.

(a) All powers granted a water district created under this subchapter shall be executed by a board of directors.

(b) The board shall have the right, power, and authority to employ attorneys, agents, and personnel as it may deem necessary and to fix their compensation.

**History.** Acts 1957, No. 114, § 7; 1970 (Ex. Sess.), No. 21, § 1; A.S.A. 1947, § 21-1407.

#### RESEARCH REFERENCES

Ark. L. Rev. Watkins, Open Meetings Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 268 (1984).

# Subchapter 4 — Operation of Water Districts

SECTION.

14-116-401. Exemption from jurisdiction of Arkansas Public Service Commission.

14-116-402. District powers.

14-116-403. Appeal from district actions.

14-116-404. Revenues.

SECTION.

14-116-405. Tax exemption.

14-116-406. Annexation of additional territory.

14-116-407. Contracts - Water district and United States.

Preambles. Acts 1957, No. 114, contained a preamble which read: "Whereas, the United States under and by virtue of several acts of Congress has authorized. and may by similar acts authorize, the Corps of Engineers of the Department of the Army and/or the Chief of Engineers of the United States Army to discuss plans and to execute projects for the construction of multipurpose reservoirs for the purpose of flood control and water supply on rivers and tributaries of/or bordering on this State: and,

"Whereas, the Congress of the United States has announced a policy in adopting and authorizing such projects that no federal funds can be expended to provide water storage capacity for industrial, municipal and agricultural water supply purposes in said reservoirs until some authorized local agency shall execute to the United States a contract of assurance that such local interest will, (a) make use of said water supply and (b) pay such additional costs of said reservoir as may be allocated to water supply; and,

"Whereas, no work can be done on some of the projects which have been adopted and authorized by the Congress of the United States, and no projects hereafter authorized by Congress, for the reason that there is no law in this State under which an individual water district can conveniently be organized over the large area required; and,

"Whereas, in instances now existing and which will exist in the future, the State and counties in the affected area to be benefited by said improvements have been deprived, and will continue to be deprived, of receiving and participating in said water supply to be realized from said projects, and that it is to the interest of the State that some provision be made for the organization and creation of such water districts, with full power and authority to give such assurances to the United States, and with full power and authority to comply with the terms and provisions of said acts of Congress, to acquire title to and use of water stored in said reservoirs and to sell and distribute same for the use and benefit of the people of the State of

Arkansas: Now Therefore...."

Effective Dates. Acts 1957, No. 114, § 17: approved Feb. 28, 1957. Emergency clause provided: "It is hereby ascertained by the General Assembly of the State of Arkansas that there are no present laws concerning the organization, formation and operation of public, nonprofit regional water distribution districts to make use of a water supply available, and to be available, in multipurpose reservoirs constructed by, or under the supervision of, the Corps of Engineers of the Department of the Army on rivers and tributaries of/or bordering on this State, and to pay such additional costs of said reservoirs as may be allocated to water supply. And it is further ascertained that no work can be done on some of the projects which have been adopted and authorized by the Congress of the United States, or which may hereafter be authorized by Congress, for the reason that there are no laws in this State under which nonprofit regional water distribution districts can conveniently be organized over a large area required, and that the State will lose the profit of such projects unless this Act is passed and becomes effective immediately. It is therefore declared that this Act is necessary for the immediate preservation of the public peace, health and safety and an emergency is declared to exist, and this Act shall take effect and be in full force from and after its passage."

Acts 1969, No. 98, § 4: Feb. 24, 1969. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that regional water distribution districts are essential to the proper development of the resources of the state of Arkansas; that in order for these regional water distribution districts to obtain adequate financing for the accomplishment of the purposes for which they were created, it is essential that the maximum interest rate permitted for obligations issued by them be specified clearly and that the procedure for the issuance of such obligations be clarified; and that only by the immediate effectiveness of this Act may the foregoing purposes be accomplished. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from and after its passage and approval."

Acts 1970 (Ex. Sess.), No. 21, § 4: Mar. 13, 1970. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relating to the boards of directors of regional water distribution district does not assure adequate representation to all areas of such district; that it is essential to the proper and efficient administration of the business of such water districts that the court creating such districts be given authority to increase the membership of the board of directors of such district to assure proper representation to all areas of the district; that the present law relative to water districts should be clarified to assure that the furnishing of water to consumers outside the district shall not result in increase of the cost of water or other services to members within the district; and that this act is immediately necessary in order to correct the above described inadequacies in the water district law. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1977, No. 194, § 2: Feb. 18, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the development of the water resources of this State is essential to the economic growth of the State, and is especially vital to the development of rural areas within the State, and that the im-

mediate passage of this Act is necessary to enable regional water distribution districts to borrow funds, especially from instrumentalities of the federal government, to mature within not more than forty (40) years, to establish a schedule of payments of principal and interest thereon in an economically feasible and manageable manner commensurate with the estimated resources to be available to the districts, and that the immediate passage of this Act is necessary to accomplish such purposes and to enable said project to complete their organization and development. Therefore, an emergency is hereby declared to exist and this Act. being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 721, § 5: Apr. 3, 1979. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the present interest rate for bonds issued by regional water distribution districts (being eight percent (8%) per annum) is not adequate to permit the financing of improvements by such districts, which improvements are in some instances immediately and urgently needed. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect upon its

passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1989, No. 705, § 7: Mar. 20, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an immediate and urgent need to provide for State, county, and municipal tax exemption for regional water distribution district bonds so that regional water distribution districts can reduce debt service costs. Therefore, an

emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

# 14-116-401. Exemption from jurisdiction of Arkansas Public Service Commission.

Water districts organized under this subchapter shall be exempt in any and all respects from the jurisdiction and control of the Arkansas Public Service Commission.

**History.** Acts 1957, No. 114, § 11; A.S.A. 1947, § 21-1411.

#### CASE NOTES

#### Construction.

This section did not impliedly repeal § 23-18-101, which prohibits any public utility from providing utility service in an

area allocated to another public utility. Southwestern Elec. Power Co. v. Carroll Elec. Coop., 261 Ark. 919, 554 S.W.2d 308 (1977).

## 14-116-402. District powers.

Each water district shall have power to:

(1) Sue and be sued, complain and defend, in the district's name;

(2) Adopt a seal which may be altered at pleasure, and to use it, or a facsimile thereof, as required by law;

(3)(A) Acquire absolute title to and use for any purpose and at any place water stored in any reservoir or other water source created by the construction of a multipurpose dam by or under the direction and supervision of the United States Army Corps of Engineers or by the water district with federal financial or other assistance furnished by the United States Secretary of Agriculture under the provisions of the Watershed Protection and Flood Prevention Act, as amended, or with financing provided by any federal, state, or other source;

(B) Acquire water storage and withdrawal rights in any reservoir or other water source created by the construction of a multipurpose dam by or under the direction and supervision of the United States Army Corps of Engineers or by the water district with federal financial or other assistance furnished by the United States Secretary of Agriculture under the provisions of the Watershed Protection and Flood Prevention Act, as amended, or with financing provided by any federal, state, or other sources:

(C) Transport, distribute, sell, furnish, and dispose of the water

from whatever source derived to any person at any place;

(D) Construct, erect, purchase, lease as lessee, and in any manner acquire, own, hold, maintain, operate, sell, dispose of, lease as lessor,

exchange, and mortgage real property, personal property, easements, interests in real property, plants, buildings, works, machinery, supplies, equipment, apparatus, facilities, property rights, and transportation and distribution lines, facilities, equipment, or systems necessary, convenient, or useful;

(E) Regulate, define, and control the rate and location of any withdrawal or transfer of water which is owned, acquired, or developed by the water district in natural or manmade channels; provided that riparian owners of natural watercourses are not obligated to pay for their historical riparian use from such natural water courses:

(F) Authorize persons to enter for any purpose water which has been or is being transported or is held by the water district, but only if the water district has acquired absolute title to land under the water or has obtained permission of the owner of the land under the water; provided, this provision shall not limit a district's authority to enter on lands for inspection or other purposes consistent with the

purposes of this chapter;

(4) Assist its customers in the preparation of their premises for the use of water furnished by the water district and install upon the premises fixtures, machinery, supplies, apparatus, and equipment of any and all kinds and character, and in connection therewith, and for that purpose, to purchase, acquire, lease, sell, distribute, install, and repair fixtures, machinery, supplies, apparatus, and equipment of any and all kinds and character and to receive, acquire, endorse, pledge, hypothecate, and dispose of notes, bonds, and other evidences of indebtedness;

(5) Acquire, own, hold, use, exercise, and to the extent permitted by law, to sell, mortgage, pledge, hypothecate, and in any manner dispose of franchises, rights, privileges, licenses, rights-of-way, and easements

necessary, useful, or appropriate;

(6) Purchase, receive, lease as lessee, or in any other manner acquire, own, hold, maintain, sell, exchange, and use any and all real

and personal property, or any interest therein;

(7)(A) Borrow money and otherwise contract indebtedness, to issue its obligations therefor, and to secure the payment thereof by mortgage, pledge, or deed of trust of all or any part of its property, assets, franchises, rights, privileges, licenses, rights-of-way, easements, rev-

enues, or income.

(B) The obligations may be in the form of negotiable bonds but may be registered as public obligations under the Registered Public Obligations Act of Arkansas, § 19-9-401 et seq., may be issued in one (1) or more series, may bear such date or dates, may mature at such times, not exceeding forty (40) years from their respective dates, may bear interest at rate or rates, may be in such form, may be executed in such manner, may be payable in such medium of payment, may be payable at such place or places, within or without the State of Arkansas, may be subject to such terms of redemption, and may contain such terms, covenants, and conditions as the resolution of the board authorizing the bonds may provide.

(C) The resolution of the board authorizing the bonds may provide for the execution by the water district of a trust indenture with a bank or trust company, within or without the State of Arkansas, which defines the rights of the holders and registered owners of the bonds and provides for the appointment of a trustee for the holders and registered owners of the bonds.

(D) The trust indenture may control the priority between successive issues and may contain such other terms, covenants, and conditions that are deemed desirable including, without limitation, those pertaining to the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the maintenance and investment of various funds and reserves, the nature and extent of the security, the rights and duties of the water district and the trustee for the holders or registered owners of the bonds, and the rights of the holders or registered owners of the bonds.

(E) The bonds may be sold at such price, including sale at a

discount, and in such manner as the board may determine.

(F) All bonds, whether previously or subsequently issued pursuant to the provisions of this section, shall be exempt from all state, county, and municipal taxes;

(8) Sell and convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property, assets, franchises, rights,

privileges, licenses, rights-of-way, and easements;

(9) In connection with the acquisition, construction, improvement, operation, or maintenance of its transportation and distribution lines, systems, equipment, facilities, or apparatus, use the bed of any stream without adversely affecting existing riparian rights, any highway or any right-of-way, easement, or other similar property rights, or any tax-forfeited land owned or held by the State of Arkansas or any political subdivision; however, this provision does not entitle riparian users to receive water owned, acquired, or developed by the water

district without paying the district's water user charges;

- (10) Have and exercise the right of eminent domain for the purpose of acquiring rights-of-way and other properties necessary in the construction or operation of its property and business in the manner now provided by the condemnation laws of this state for acquiring private property for public use; however, this power shall not be used by an irrigation water district for the acquisition or construction of private on-farm irrigation reservoirs or natural watercourses, and any surplus property obtained by an irrigation water district under this power shall be first offered to the person or persons owning the remaining property from which it was taken at the price paid as eminent domain damages before it may be sold to others;
- (11) Accept gifts or grants of money, services, franchises, rights, privileges, licenses, rights-of-way, easements, or other property, real or personal;
- (12) Make any and all contracts necessary or convenient for the exercise of the powers granted in this chapter;

(13)(A) Fix, regulate, and collect rates, fees, rents, or other charges for water and any other facilities, supplies, equipment, or services furnished by the water district.

(B) Rates shall be just, reasonable, and nondiscriminatory.

(C) If any district distributes water to consumers outside the district, the rates, fees, rents, and other charges for water and other facilities, supplies, equipment, or services furnished to consumers outside the district shall be calculated to pay the cost of such distribution outside the district. No part of the cost of distributing water or providing other services outside the district shall be borne by the members of the district, and there shall be no increase in the cost to members in the district as a result of furnishing water to consumers outside the district;

(14) Conduct its affairs within and without this state;

(15) Elect, appoint, or employ officers, agents, and employees of the water district and define their duties and fix their compensation;

(16) Do and perform all acts and things and have and exercise any and all powers as may be necessary, convenient, or appropriate to effectuate the purposes for which the water district is organized;

(17) Accept appropriations from the state upon such terms and conditions as may be imposed by law or regulation to be used in the furtherance of the purposes for which the water district was created;

(18) With notice, enter upon any land within or outside the water district for inspection purposes or other purposes as are necessary, convenient, and not inconsistent with the purposes of this chapter;

(19) Notwithstanding the powers conferred by this section, a water district shall comply with all laws of the State of Arkansas regarding the acquisition, storage, transportation, distribution, treatment, or disposal of water, including, without limitation, laws related to minimum stream flow, nonriparian water use, groundwater use, Arkansas

Water Plan compliance, and public water supply;

(20) Notwithstanding any other provisions of this chapter, no irrigation district shall have the power to acquire title to or use any water stored in any reservoir created by a dam constructed before July 1, 1995, or to acquire water storage or withdrawal rights in any such reservoir. The last sentence shall not apply to United States Army Corps of Engineers projects whose main purpose is navigation. Irrigation districts may obtain water from wells, from excess surface water as defined in § 15-22-304, and from reservoirs constructed after July 1, 1995.

**History.** Acts 1957, No. 114, § 8; 1963, No. 120, § 5; 1969, No. 98, § 1; 1970 (Ex. Sess.), No. 21, § 2; 1973, No. 137, § 5; 1977, No. 194, § 1; 1979, No. 721, § 1; 1981, No. 425, § 33; A.S.A. 1947, § 21-1408; Acts 1989, No. 618, § 1; 1989, No. 705, § 1; 1995, No. 838, § 5; 1997, No. 907, § 2.

A.C.R.C. Notes. Acts 1989, No. 705,

§ 2, provided: "Act No. 114 of 1957, as amended, and as amended hereby, is hereby confirmed."

Acts 1989, No. 705, § 3, provided: "Any provision of law, whether special or general, in conflict with this act is expressly superseded by this act to the extent of such conflict. This act is supplemental to all other provisions of state law governing

the issuance of bonds and, except as otherwise provided in this act, the provisions of state law governing the issuance of bonds continue to apply."

Acts 1989, No. 705, § 4, provided that the provisions of this act shall be liberally construed in order to effectively carry out

its purposes.

Amendments. The 1995 amendment substituted "the district's name" for "in its corporate name" in (1); substituted "as amended, or with financing provided by any federal, state, or other source" for "or any other federal law" at the end in (3)(A); substituted "or with financing provided by any federal, state, or other sources" for "or any other federal law" in (3)(B); inserted "real property, personal property, easements, interests in real property" near the end in (3)(D); rewrote (3)(E); added (3)(F); substituted "negotiable bonds but ...

§ 19-9-401 et seq." for "negotiable coupon bonds payable to bearer, but may be registrable as to principal only or as to principal and interest" in (7)(B); inserted "water" in (7)(C) and (D); substituted "this section" for "this act" in (7)(F); added the language beginning "however" in (9) and (10); substituted "this chapter" for "this subchapter" in (12); added (17)-(20); and made stylistic changes.

The 1997 amendment substituted "private on-farm irrigation" for "farm irrigation" in (10).

**U.S. Code.** The Watershed Protection and Flood Prevention Act, referred to in this section, is codified as 16 U.S.C. §§ 1001-1007.

Cross References. Tort liability immunity, § 21-9-301 et seq.

Arkansas Water Plan, § 15-22-503.

#### RESEARCH REFERENCES

Ark. L. Rev. Looney, Enhancing the Role of Water Districts in Groundwater Management and Surface Water Utilization in Arkansas, 48 Ark. L. Rev. 643.

#### **CASE NOTES**

ANALYSIS

Acquisition of water. Electric utility lines. Eminent domain.

Acquisition of Water.

This chapter authorizes the districts to acquire water from wells, lakes, rivers, tributaries, or streams of or bordering this state, in addition to water from federal impoundments. Lyon v. White River-Grand Prairie Irrigation Dist., 281 Ark. 286, 664 S.W.2d 441 (1984).

#### Electric Utility Lines.

The powers granted to a water district in the context of the operation of water distribution facilities and services do not give the water district the right to construct its own electric power line from its plant within one power company's certified territory into the certified territory of another power company. Southwestern Elec. Power Co. v. Carroll Elec. Coop., 261 Ark. 919, 554 S.W.2d 308 (1977).

#### Eminent Domain.

The fact that a proposed canal for which a water district sought to acquire a right-of-way under eminent domain would at first serve only one user did not make such exercise of the right of eminent domain for private rather than public use where such water would be rendered available to many prospective users on the same terms. Hale v. Southwest Ark. Water Dist., 244 Ark. 647, 427 S.W.2d 14 (1968).

## 14-116-403. Appeal from district actions.

Any person aggrieved by the service furnished or rates charged by the water district shall have, as a matter of right, the right to petition the grievance from the decision or action of the water district, to the circuit court wherein the water district was formed. Upon the petition being

filed, the circuit court shall hear the petition de novo and is empowered to make orders as necessary and proper in equity.

**History.** Acts 1957, No. 114, § 9; A.S.A. 1947, § 21-1409.

#### CASE NOTES

Cited: Hale v. Southwest Ark. Water Dist., 244 Ark. 647, 427 S.W.2d 14 (1968).

#### 14-116-404. Revenues.

(a) Water districts formed pursuant to this subchapter shall be operated without profit, but the rates, fees, rent, or other charges for water and other facilities, supplies, equipment, or services furnished by the water district shall be sufficient at all times:

(1) To pay all operating and maintenance expenses necessary or desirable for the prudent conduct of its affairs and the principal of and interest on the obligations issued or assumed by the water district in the performance of the purposes for which it was organized; and

(2) For the creation of adequate reserves.

(b) The revenues of the water district shall be devoted, first, to the payment of operating and maintenance expenses and the principal and interest on outstanding obligations, and thereafter to reserves for improvements, new construction, depreciation, and contingencies as

the board may from time to time prescribe.

(c) Revenues not required for the purposes set forth in subsection (b) of this section shall be returned from time to time to the customers of the water district on a pro rata basis, according to the amount of business done with each customer during the period for which the return is made, either in cash, in abatement of current charges for water, or otherwise as the board determines; but such return may be made by way of a general rate reduction to customers if the board so elects.

**History.** Acts 1957, No. 114, § 12; A.S.A. 1947, § 21-1412.

#### **CASE NOTES**

#### Net Revenues.

A deed of trust when construed as a whole provides for the operation and maintenance of the district's property so that there is no pledge of gross revenues in violation of the statutory provision for pledge only of net revenues. Hink v. Board of Dirs., 235 Ark. 107, 357 S.W.2d 271 (1962).

## 14-116-405. Tax exemption.

Water districts formed under this chapter shall be exempt from all excise taxes of whatsoever kind or nature, and further, shall be exempt from payment of assessments in any general or special taxing district levied upon the property of the water district, whether real, personal, or mixed.

**History.** Acts 1957, No. 114, § 10; **Cross References.** Exemption from ad A.S.A. 1947, § 21-1410. valorem taxation, § 26-3-305.

## 14-116-406. Annexation of additional territory.

(a) Additional territory may be annexed to and embraced by a water district established and operating under this subchapter by petition to the circuit court in which the water district was originally established.

(b) The petition shall be prepared, filed, and proceedings had thereon in the same manner as is set out in this subchapter for original petitions praying the formation of a water district.

**History.** Acts 1957, No. 114, § 13; A.S.A. 1947, § 21-1413.

## 14-116-407. Contracts — Water district and United States.

The board is authorized to:

(1) Cooperate with the United States or any agency or instrumentality thereof, hereinafter referred to as the "United States", in the development of plans for the construction, operation, and maintenance of any facilities which the water district is authorized to construct, operate, and maintain;

(2) Negotiate a contract with the United States or give such assurance as may be required by the United States for the construction, operation, and maintenance of such facilities or any part thereof by the

United States.

(A)(i) The contract or assurance may provide for the payment by the water district to the United States of the agreed costs thereof in the form of construction charges, operation and maintenance

charges, water storage rental, or service charges.

(ii) "Construction charges" may include the cost of works of improvement for any project addressing the purposes contained in § 14-116-102 and ancillary benefits derived therefrom, including, but not limited to, fish and wildlife, prevention of seepage on irrigated lands, prevention of erosion and sediment damages, and the conservation, development, utilization, and disposal of water.

(B) The contract or assurance may provide for the repayment of the various charges by the water district primarily or exclusively from revenue to be derived by the district from the sale under contract between the district and its water users from the district works, with payment to be made either in the form of agricultural products, cash, or, if an improvement project area has been created SECTION.

under § 14-116-501 et seq., § 14-116-601 et seq., or § 14-116-701 et seq., with revenues derived from assessments levied pursuant thereto.

- (C) The contract or assurance may provide that the water district shall furnish lands, easements, and rights-of-way and that property so acquired by the district may be conveyed to the United States insofar as the property may be required for the construction, operation, and maintenance of works thereon by the United States for the benefit of the district.
- (D) The contract or assurance may provide that the water district shall save and hold harmless the United States from any liability or damages due to or arising out of the construction, operation, and maintenance of any of the works.

History. Acts 1995, No. 838, § 6.

### Subchapter 5 — Improvement of Water Districts

for assessment-based water district projects.

14-116-502. Court approval of project im- 14-116-504. Alteration of plans. pointment of assessor.

SECTION.

14-116-501. Proposed improvement plan 14-116-503. Expenses — Plan preparation, adoption, and approval.

provement plan - Ap- 14-116-505. Additional works of improve-

## 14-116-501. Proposed improvement plan for assessment-based water district projects.

- (a)(1) Upon the securing of a petition described in subsection (b) of this section, a water district may develop an improvement project plan for any purpose contained in § 14-116-102 that would benefit the lands within the district.
- (2) All such improvement plans for improvement project areas shall be appropriately identified by a number or a name selected by the district.
- (3) The district may employ an independent engineer or seek the assistance of federal or state agencies in developing the plan.
- (4) The plan must include a preliminary survey and a report and should include the following as a minimum:
  - (A) The territory which will be benefited by the proposed improvement (the territory need not consist of contiguous parcels of land);

(B) The general character of the improvements;

- (C) An estimate, in reasonable detail, of the expenses involved;
- (D) The proposed works of improvement and their proposed locations as can be estimated:
- (E) The general nature, purposes, utility, and need of the proposed improvements and their feasibility;
- (F) An estimate, to the extent it is known, of the method of financing for works of improvement;

(G) The amount, if any, proposed to be assessed generally against the benefited lands:

(H) Whether, and if so, to what extent, any lands, lakes, or natural watercourses, rivers, tributaries, or streams within the project improvement area are likely to be damaged by or as a result of the acquisition or construction of improvements constituting part of the plan of improvement:

(I) The plan for compensating landowners for damages, if any.

(b) Upon the securing of a petition by a majority of the owners of the benefited lands and the owners of a majority in value of the benefited lands, as shown by the last assessment of real property within a proposed improvement project area within the water district, the district shall update and complete a final improvement plan which shall contain a final survey and report.

(c) The petition shall describe generally the proposed improvement

plan as contained in the preliminary survey and the report.

(d) Upon completion of the final improvement plan for an improvement project area, a copy of the final survey and report shall be submitted to the commission for its approval and to other appropriate federal and state agencies for comment. The commission shall solicit written comment from appropriate federal and state agencies on the items described in the final survey and report, including, but not limited to, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the Arkansas State Game and Fish Commission, the Department of Arkansas Heritage, and the Department of Pollution Control and Ecology. Upon receipt of comments from such agencies, the commission shall make such comments available to the public and shall solicit comments from the public, giving notice by publication in a newspaper published and having a general circulation in the water district, once a week for two (2) weeks, of the commission's intent to hold a hearing, to be held not less than twenty (20) days after first publication of such notice, at which hearing comments from the public will be heard. The commission shall duly consider all comments received from such agencies and the general public, if any, and shall thereafter approve, modify, or disapprove such final report and survey and notify the district's board of directors of its action in the matter.

(e) If the commission approves the report, or approves the report with modifications, and, after the board reviews comments, the board may adopt the final improvement plan, with any necessary amend-

ments and/or revisions to the final survey and report.

**History.** Acts 1995, No. 838, § 7; 1997, No. 907, § 3.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: "'Arkansas Department of Pollution Control & Ecology' renamed to 'Arkansas Department of Environmental Quality'. (a) Effective March 31, 1999, the 'Arkansas Department of Pollution Control & Ecology' or 'Department,' as it is

referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Environmental Quality' is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution

Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

Amendments. The 1997 amendment deleted "if the order establishing the district expressly so permits" after "a water district may" in (a)(1).

# 14-116-502. Court approval of project improvement plan — Appointment of assessor.

(a) The board shall by petition request court approval of the improvement plan. As part of its petition, the board shall submit a copy of the final survey and report along with such additional information or maps necessary so that the court may understand therefrom the purpose,

utility, feasibility, and need for the improvement plan.

(b) Upon the filing of the petition by the board, the court clerk shall give notice thereof by certified registered letter to each landowner, at the address contained in the records of the county tax collector, owning property within the proposed improvement project area and by publication for two (2) weeks in a newspaper published and having a general circulation in the water district calling upon all persons owning property within the proposed improvement project area, which shall be described in the notice, to appear at a hearing before the court, on some day to be fixed by the court, to show cause in favor of or against the property improvement plan for the proposed improvement project area.

(c)(1) Based upon a review of the petition and attachments, the court, if it determines that the improvement plan is in the best interest of the owners of land within the proposed improvement project area, shall

authorize the district to employ an assessor.

(2) If the court determines that the improvement plan is not in the best interest of the owners of land within the proposed project area, it

shall deny the petition.

(d)(1) The assessor retained by the district shall take the oath of office as required by Arkansas Constitution, Article 19, § 20, and shall also swear that he will well and truly complete his duties of assessor.

(2) The district may from time to time change assessors, but the

assessor selected must be approved by the court.

(e) The assessor shall review the petitions of the landowners to determine if at least a majority of the owners of the benefited lands and the owners of a majority in value of the benefited lands, as shown by the last assessment of real property within a proposed improvement project area, have signed said petitions.

(f) Upon certification by the assessor that the requirements of subsection (e) of this section have been met, the court shall enter an order approving the improvement plan and establishing the project

improvement area.

(g) The court's findings shall have the force and effect of a judgment, from which an appeal may be taken within thirty (30) days, either by any such owner of land or by the board; but, if no appeal is taken within

that time, the order shall be deemed to be conclusive and binding upon all the land within the boundaries of the improvement project area, and upon the landowners.

History. Acts 1995, No. 838, § 7.

# 14-116-503. Expenses — Plan preparation, adoption, and approval.

All costs and expenses incurred in the preparation, adoption, and approval of an improvement plan shall be paid by the water district out of its general funds, but all such costs and expenses paid or otherwise incurred by the district, upon the approval of the improvement plan, shall be repaid to the general funds of the district out of the proceeds of the first taxes or other revenues collected by the district for carrying out the improvement plan; provided that nothing in this chapter shall authorize punitive assessments to be made against any landowner.

History. Acts 1995, No. 838, § 7.

## 14-116-504. Alteration of plans.

(a)(1) The board may, at any time after the court has approved the improvement plan, make alterations in the plan and its works of improvement, provided such changes do not change the benefits of the improvement plan.

(2) Any such change in the improvement plan shall be filed with the

court clerk.

(b) If alterations in the improvement plan would change the court-approved assessment of benefits and damages, the changed assessment must be submitted to the court for consideration according to the procedures established in this chapter; except that only owners of lands whose assessments are changed may object.

History. Acts 1995, No. 838, § 7.

# 14-116-505. Additional works of improvement.

After the work contemplated by the original improvement plan has been completed, the board may adopt and file with the court clerk a plan for additional works of improvement for the improvement project area, and the proceedings with respect to such additional plan, including the right of appeal, shall be the same insofar as may be practicable as those required in connection with the original plan; except that the petitions of the landowners shall not be required.

**History.** Acts 1995, No. 838, § 7.

### SUBCHAPTER 6 — IMPROVEMENT PLAN ASSESSMENTS

SECTION.	SECTION.
	14-116-606. Reassessments.
14-116-601. Assessment of benefits and	
damages.	14-116-607. Payment of taxes.
14-116-602. Assessments — Filing and	14-116-608. Levy of tax — Lien — Appeal
recording — Appointment	from tax assessment.
of board of adjustment.	14-116-609. Levy of tax for preliminary
14-116-603. Appeal — Notice — Hearing	expenses.
of assessment complaints.	14-116-610. Levy of tax for operation and
14-116-604. Acquiescence in damage as-	maintenance.
sessment — Condemna-	14-116-611. Extension of taxes on county
tion.	tax books — Collection of
14-116-605. Assessments — Complaints.	taxes.

## 14-116-601. Assessment of benefits and damages.

(a) After the court issues an order approving the improvement plan, the assessor shall proceed to assess the land within the project area on the basis of benefits accruing to the land from the improvement plan.

(b)(1) Taking into account available funding sources, and in the discretion of the district, the total tax levied against all individual and separate parcels of land within the project area shall be sufficient to pay up to the estimated cost of the improvement, all related costs, including, but not limited to, the interest, bond issuance, legal, accounting, appraisals, the debt issuance and related costs, and up to an additional twenty percent (20%) for unforeseen contingencies.

(2) The amount of interest which will accrue on notes, bonds, or other evidences of indebtedness issued by a water district shall be included in and added to the taxes levied against the land in the project area, but the interest to accrue on the notes, bonds, or other evidences of indebtedness shall not be construed as a part of the costs of construction in determining whether the expenses and the costs of making the

improvements exceed the assessment of benefits.

(c) The tax so levied shall be a lien upon the land within the improvement project area from the time that the tax is levied by the court and shall be entitled to preference over all demands, executions, encumbrances, or liens whensoever created. It shall continue until the tax and all related costs and expenses with penalties shall have been paid.

(d)(1) A separate book for each improvement project area shall be maintained with respect to assessments of benefits on the basis of

benefits accruing to the land from the improvement plan.

(2) The assessor shall cause to be inscribed in the book the description of each tract of land. The assessor shall assess the value of the benefits to accrue to each tract by reason of the improvement plan, including, without limitation, the works of improvement, and shall enter the assessment of benefits opposite the description, together with an estimate of what the landowner will be required to pay on the assessment.

(3) There shall be placed opposite the description of each tract of land the name of the owner, as shown by the last county assessment, but a mistake in the name shall not vitiate the assessment. Evident errors which occur in the county assessment list may be corrected.

(e) The assessor shall also assess all damages that will accrue to any landowner by reason of the proposed improvements, including all injury

to lands taken or damaged.

History. Acts 1995, No. 838, § 7.

## 14-116-602. Assessments — Filing and recording — Appointment of board of adjustment.

- (a)(1) When an assessment is completed, the assessor shall subscribe an original and one (1) copy of the assessment and deposit the original with the court clerk, where it shall be kept and preserved as a public
- (2) The copy shall be certified by the court clerk after court confirmation and returned to the assessor to be preserved with the records of the water district.
- (b) Upon the filing of assessment with the court clerk, the court shall appoint a three-member board of adjustment to hear complaints as provided for in § 14-116-605. Members of the board of adjustment shall be owners of land within the improvement project area and shall serve without compensation, except that the water district shall pay the board of adjustment and its members necessary and reasonable expenses associated with hearing complaints and reporting its recommendations to the court.

History. Acts 1995, No. 838, § 7.

## 14-116-603. Appeal — Notice — Hearing of assessment complaints.

(a)(1) Upon the filing of assessment, the court clerk shall give notice thereof by publication for two (2) weeks in a newspaper published and

having a general circulation in the water district.

(2) The notice of hearing shall give a description of the land assessed and state that the owners of the land may appear before the board of adjustment on a day named therein and present complaints, if they have any, against the assessment of any land in the improvement project area.

(3) The day so named shall be not less than ten (10) days nor more

than thirty (30) days after the last publication of the notice.

(b) If no complaint is made on the assessments levied, the assessments as deposited with the court clerk shall be conclusive, and the court shall enter an order confirming the assessment.

(c) Findings of the court shall have the force and effect of a judgment, from which an appeal may be taken within thirty (30) days, either by

any such owner of land or by the board.

History. Acts 1995, No. 838, § 7.

# 14-116-604. Acquiescence in damage assessment — Condemnation.

If such owner has been given notice by certified mail posted at least thirty (30) days prior to the date of the hearing provided for in § 14-116-603, he shall be construed to have accepted the assessment of damages in his favor made by the assessor or to have acquiesced in the failure to assess damages in his favor unless he gives to the court clerk, not later than the date of the hearing provided for in § 14-116-603, notice in writing that he demands a reassessment of his damages. In this event, the board shall institute an action to condemn the land that will be taken or damaged in carrying out the works of improvement included in the improvement plan.

History. Acts 1995, No. 838, § 7.

## 14-116-605. Assessments — Complaints.

- (a) Any owner of land within the improvement project area who conceives himself to be aggrieved by the assessment of benefits or that the assessment of any land within the project area is inadequate, shall present his complaint to the board of adjustment on the day named in the notice of hearing. At that time, the board of adjustment shall consider the complaint and make recommendations to the court thereon, either confirming the assessment or increasing or diminishing it.
- (b) After review of the evidence presented to the board of adjustment and the recommendation of the board of adjustment, the court shall enter its findings thereon, either confirming the assessment or increasing or diminishing it.

History. Acts 1995, No. 838, § 7.

## 14-116-606. Reassessments.

(a) In no event shall a reduction of assessments be made after the assessment of benefits has been confirmed by the court as provided in § 14-116-603 and obligations based on the assessments have been incurred, but any reduction in benefits shall be paid for by the water district as damages. The claim for those damages shall be secondary and subordinate to the rights of the holders of bonds or other obligations or evidences of indebtedness which have theretofore been issued.

(b) If, by reason of a change of the improvement plan pursuant to \$ 14-116-504, or change in land use, or any other reason, the board determines that current assessment on any land within the improvement project area has become inequitable, the board may direct the assessor to reassess the property. The assessor shall reassess the land in question, increasing the assessment if greater benefits will be

received and reducing the assessment if benefits have decreased or if damages will be sustained.

(c) All reassessments shall be made, advertised, and confirmed as is provided for the original assessment of benefits under this subchapter.

(d) If any obligation of the water district arising from the improvement plan shall be outstanding at the time of a reassessment, the total liability thereon of land against which assessments of benefits have been confirmed shall be no less than the liability of the property by reason of the original assessment.

History. Acts 1995, No. 838, § 7.

## 14-116-607. Payment of taxes.

(a) When the tax levies are made, the landowners shall have the privilege of paying the taxes in full, without interest, within thirty (30) days after the levy becomes final.

(b) All taxes levied may be paid in installments, so that not more than ten percent (10%) of the allocated tax shall be collectible in any one (1) year against the wishes of the landowner. The deferred installments of the taxes shall bear interest at a rate established by the board and

shall be payable only in installments as levied.

(c) If any landowner shall pay in full the levy of taxes against his land as herein provided, that land shall not be further liable by reason of the assessment of benefits or any reassessment thereof except a reassessment because of changed plans as provided in § 14-116-606(b), and then only to the extent of the increase in assessment, if any, because of the greater benefit thereby received. However, in case of any additional assessment for greater benefit, any landowner who shall have paid his previous tax levy in full shall have the privilege of paying in full the increase in tax levied in the manner herein provided.

History. Acts 1995, No. 838, § 7.

# 14-116-608. Levy of tax — Lien — Appeal from tax assessment.

(a) The court shall, at the same time that the assessment of benefits is filed or at any subsequent time when called upon by the board, enter an order, which shall have the force and effect of a judgment, providing that there shall be levied against the land within the project area a tax sufficient to pay the estimated cost of the improvement, with up to twenty percent (20%) added for unforeseen contingencies.

(b)(1) This tax shall be a charge against the land in the proportion to the amount of the assessment of benefits thereon and may be paid in

full or in annual installments as provided in § 14-116-607.

(2) The tax so levied shall be a lien upon the land within the improvement project area from the time that the tax is levied by the court and shall be entitled to preference over all demands, executions, encumbrances, or liens whensoever created. It shall continue until the

tax, with such penalties and costs as may accrue thereon, shall have been paid.

(c)( $\overline{1}$ ) The remedy against such levy of taxes shall be by appeal, and this appeal shall be taken within twenty (20) days from the date of the order by the court.

(2) On this appeal, the presumption shall be in favor of the legality

of the tax.

History. Acts 1995, No. 838, § 7.

# 14-116-609. Levy of tax for preliminary expenses.

- (a) If the board does not deem it to the advantage of the project area to proceed immediately with the construction of the works of improvement upon the filing and confirmation of the assessment of benefits, it may cause to be levied and collected a tax based upon the assessment of benefits and collectible from the benefited land in the improvement project area in the proportion to the amount of the assessment of benefits thereon for the purpose of paying preliminary expenses for development of the improvement plan for the improvement project area.
- (b) The board shall report to the court the rate of taxation necessary to be levied to pay the preliminary expenses, and thereupon it shall be the duty of the court to make levy of taxes upon the benefited land in the project area sufficient to pay the preliminary expenses, with ten percent (10%) added for unforeseen contingencies. This tax shall be extended upon the tax books of the county and collected along with other taxes in the same manner as taxes levied for construction purposes, as provided in this chapter.

(c) If any project area is abandoned before the making of the assessment of benefits, the tax for preliminary expenses shall be levied at the rate fixed by the board upon the real property therein upon the

basis of the assessment for county and state purposes.

History. Acts 1995, No. 838, § 7.

# 14-116-610. Levy of tax for operation and maintenance.

- (a) On or before the first Monday in October of each year, the board shall estimate the amount necessary for the ensuing calendar year for operation and maintenance of the works of improvement provided for in the improvement plan, taking into account all available funding, and shall submit the estimate to the court, with a request that a tax levy be made for the amount needed.
- (b) If the court finds the amount to be fair and reasonable, it shall enter an order, which shall have the force and effect of a judgment, providing that there shall be levied against the benefited land within the improvement project area a tax sufficient to pay the estimated cost of operation and maintenance.

(c) This tax may be a flat charge per acre or a charge against the benefited land in the proportion to the amount of the assessment of benefits on the land.

History. Acts 1995, No. 838, § 7.

## 14-116-611. Extension of taxes on county tax books — Collection of taxes.

(a) Copies of the assessment necessary for the assessment and collection of taxes by the county shall be provided by the district to the appropriate county officials of each county within the improvement project area.

(b)(1) The amount of the taxes herein provided for shall be annually extended upon the tax books of the county, or counties if the improvement project area is situated in more than one (1) county, and collected

by the collector of the county along with the other taxes.

(2) For his services in making this collection, the collector shall

receive a commission as is provided by law.

(c) The collections shall be paid over to the board by the collector at or before the time that he is now required to make settlement with the

county treasurer for general taxes.

(d) The collection of taxes levied hereunder, the proceedings for the collection of delinquent taxes, and the periods of redemption from sales for foreclosure of tax liens shall be in accordance with §§ 14-117-423 -14-117-427.

History. Acts 1995, No. 838, § 7.

## SUBCHAPTER 7 — BONDS

SECTION. 14-116-701. Authority to borrow money or issue bonds, etc.

14-116-702. Terms and form of bonds, etc.

SECTION. 14-116-703. Refunding bonds.

14-116-704. Security for bonds - Delinquencies.

# 14-116-701. Authority to borrow money or issue bonds, etc.

The board may borrow money at a rate of interest from any agency of the United States, the state, or any other public or private lending source; may issue promissory notes, negotiable bonds, or other evidences of indebtedness as required by the lender thereof; and may pledge and assign all assessments and revenues relating to the improvement project area for the repayment thereof.

**History.** Acts 1995, No. 838, § 7.

## 14-116-702. Terms and form of bonds, etc.

(a) Bonds or other evidences of indebtedness issued under the terms of this subchapter shall bear such date or dates, mature at such time or times not in excess of forty (40) years, and any such bonds shall be sold at public sale through competitive bidding, and any such bonds and other evidences of indebtedness and be in such form and denomination as the board may determine.

(b) The board may sell, exchange, or hypothecate these obligations from time to time at such interest rates and such prices as are specified

by the board.

History. Acts 1995, No. 838, § 7.

## 14-116-703. Refunding bonds.

Refunding bonds may be issued and may be sold, exchanged, or hypothecated by the board.

History. Acts 1995, No. 838, § 7.

# 14-116-704. Security for bonds — Delinquencies.

(a) All bonds issued under the terms of this chapter that are made payable from the proceeds of assessments shall be secured by a lien on all benefited lands in each individual improvement project area unless the board shall be able to sell bonds payable out of revenue only; provided, however, that land in any district which is not part of a project improvement area shall not be assessed with respect to any costs relating to such project improvement and shall not be encumbered with any lien relating to bonds issued with respect thereto. The board shall see to it that a tax is levied annually and collected under the provisions of this chapter so long as it may be necessary to pay any bond issued under its authority.

(b)(1)(A) If any bond or interest on any bond issued by the board is not paid within thirty (30) days after its maturity, it shall be the duty of the court, on the application of any holder of the bond or interest so

overdue, to order the collection of the taxes aforesaid.

(B) At its discretion, the court may appoint a receiver therefor.

(2) The proceeds of the taxes and collections of each improvement project area shall be applied, after payment of costs, first to overdue interest and then to payment pro rata of all bonds issued for that project area which are then due and payable.

(3) The board or receiver may be directed by suit to foreclose the lien

of the taxes on delinquent parcels of land.

(4) The suits so brought by the receiver shall be conducted in all matters as suits by the board, as herein provided, and with like effect.

(5) The decrees and deeds herein shall have the same presumptions in their favor.

(6) However, when all such sums have been paid, the receiver shall be discharged, and the affairs of the district with respect to the

improvement project area shall be conducted by the board as provided in this chapter.

History. Acts 1995, No. 838, § 7.

### SUBCHAPTER 8 — APPLICABILITY OF CHAPTER

SECTION.
14-116-801. Provisions inapplicable to state agencies, political

subdivisions, and state lands.

# 14-116-801. Provisions inapplicable to state agencies, political subdivisions, and state lands.

The provisions of this chapter, as now or hereafter amended shall not be applicable to agencies of the State of Arkansas or of political subdivisions of the state, nor to lands owned by such agencies.

History. Acts 1995, No. 838, § 10.

## **CHAPTER 117**

# IRRIGATION, DRAINAGE, AND WATERSHED IMPROVEMENT DISTRICT

#### SUBCHAPTER.

- 1. General Provisions.
- 2. DISTRICT ESTABLISHMENT.
- 3. BOARD OF COMMISSIONERS.
- 4. DISTRICT OPERATION.

#### RESEARCH REFERENCES

ALR. Local use zoning of wetlands or flood plain as taking without compensation. 19 ALR 4th 756.

Liability for diversion of surface water by raising surface level of land. 88 ALR 4th 891. UALR L.J. Looney, Diffused Surface Water in Arkansas: Is It Time for a New Rule?, 18 UALR L.J. 3.

## Subchapter 1 — General Provisions

SECTION.

14-117-101. Title.

14-117-102. Declaration of policy.

14-117-103. Definition.

14-117-104. Construction of chapter.

SECTION.

14-117-105. Master.

14-117-106. Prompt court compliance re-

quired.

14-117-107. Change of jurisdiction.

**Cross References.** Relocation assistance payments, § 22-9-701 et seq.

Effective Dates. Acts 1957, No. 171, § 10: Mar. 6, 1957. Emergency clause provided: "It has been found and declared by the General Assembly that erosion, floodwater and sediment damages in the watershed of the rivers and streams of this state are causing loss of life and damage

to property and constitute a menace to the welfare of the people of this state. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, safety and welfare shall be in full force and effect from and after its passage and approval."

#### RESEARCH REFERENCES

Ark. L. Rev. Looney, Enhancing the Role of Water Districts in Groundwater

Management and Surface Water Utilization in Arkansas, 48 Ark. L. Rev. 643.

### 14-117-101. Title.

This chapter shall be known as the "Arkansas Irrigation, Drainage, and Watershed Improvement District Act of 1949."

**History.** Acts 1949, No. 329, § 1; 1957, No. 171, § 1; A.S.A. 1947, § 21-901.

#### **CASE NOTES**

**Cited:** Allen v. Tri-County Watershed Imp. Dist., 245 Ark. 905, 435 S.W.2d 796 (1968).

# 14-117-102. Declaration of policy.

- (a) The General Assembly takes notice that interests of the state would be benefited by the establishment of irrigation systems and that the coordination of irrigation, flood control, and drainage improvements is a matter of public interest and public welfare; the General Assembly believes that this end will be promoted by enabling legislation for the organization of irrigation and drainage districts, vesting the districts with appropriate powers to accomplish their objectives, and, therefore, declares its policy to be to promote these activities by providing for the organization, operation, and maintenance of districts for the multiple purposes of irrigation, flood control, and drainage.
  - (b)(1) The General Assembly also takes notice that:
  - (A) Erosion, floodwater, and sediment damages in the watersheds of the rivers and streams of this state, causing loss of life and damage to property, constitute a menace to the welfare of the people of this state;
  - (B) This state and its political subdivisions should cooperate with the federal government for the purpose of preventing such damages and of furthering the conservation, development, utilization, and disposal of water and thereby preserve and protect this state's land

and water resources, as contemplated by the Watershed Protection and Flood Prevention Act;

(C) This cooperation may be more fully promoted by enabling legislation for the organization of watershed improvement districts vested with appropriate powers to accomplish their objectives.

(2) Therefore, the General Assembly declares its policy to be to promote such cooperation and purposes by providing for the organization, operation, and maintenance of watershed improvement districts. These districts may be combined with the other districts authorized by this chapter.

History. Acts 1949, No. 329, § 2; 1957,
No. 171, § 2; A.S.A. 1947, § 21-902.
U.S. Code. The Watershed Protection

Watershed Protection

### Solution Act, referred to in this section, is codified as 16 U.S.C.

### \$\square\$\square\$ \text{1001-1007}\$.

### 14-117-103. Definition.

As used in this chapter, unless the context otherwise requires, "board" means the board of commissioners organized pursuant to § 14-117-301 et seq.

**History.** Acts 1949, No. 329, § 8; A.S.A. 1947, § 21-908.

# 14-117-104. Construction of chapter.

Nothing in this chapter shall be construed to in any way repeal any existing statute with reference to the creation of other improvement districts within the State of Arkansas nor to in any other manner impair any obligations on contracts entered into by the other improvement districts.

**History.** Acts 1949, No. 329, § 3; A.S.A. 1947, § 21-903.

#### 14-117-105. Master.

(a) The chancery or circuit court is expressly authorized to appoint a master to take testimony and perform the functions of a master as in other cases and to make a final report and recommendation to the court.

(b) Any aggrieved party may, within thirty (30) days of the filing of a report by a master appointed as hereinbefore provided, file a written protest to the finding or recommendation of the master.

(c) The court shall approve, modify, or reverse the findings of the master and shall enter a decree in accordance with the equities in the case.

(d) Any owner of real property within the district or any other party who feels aggrieved from the final decree of the court may appeal to the Supreme Court.

**History.** Acts 1949, No. 329, § 33; A.S.A. 1947, § 21-933.

## 14-117-106. Prompt court compliance required.

If the court does not act promptly in complying with the terms of any section of this chapter essential to the creation and operation of a district, it may be compelled to do so by proceeding in mandamus in a court of competent jurisdiction.

**History.** Acts 1949, No. 329, § 5; 1957, No. 171, § 4; 1963, No. 37, § 1; A.S.A. 1947, § 21-905.

#### CASE NOTES

**Cited:** Allen v. Tri-County Watershed Imp. Dist., 245 Ark. 905, 435 S.W.2d 796 (1968).

## 14-117-107. Change of jurisdiction.

- (a) All districts formed prior to June 13, 1963, the jurisdiction over which was vested in the chancery court, upon approval of a majority of its board of directors, may petition the circuit court to assume jurisdiction.
- (b) If the circuit court deems the action to be in the best interests of the landowners of the petitioning district, an order shall be entered upon the court's records to that effect. Jurisdiction shall therefore vest to the exclusion of chancery court.

(c) However, nothing in this chapter is intended to affect the validity of existing districts heretofore created under the jurisdiction of chancery court.

**History.** Acts 1963, No. 37, § 6; A.S.A. 1947, § 21-934.

**Publisher's Notes.** Acts 1963, No. 37, \$ 7, provided "All irrigation and watershed districts heretofore created and operating under the jurisdiction of the

Chancery Court and all acts performed by or in behalf of such districts pursuant to or in accordance with orders of the Chancery Court are hereby validated for all intents and purposes."

# Subchapter 2 — District Establishment

SECTION. SECTION. 14-117-206. Prompt payment of expenses 14-117-201. Purposes. 14-117-202. Petition for establishment required. Engineer and survey -14-117-207. Effect of establishment order Bond. - Appeal. 14-117-208. Changing district bound-14-117-203. Alternative petition for establishment. 14-117-204. Notice and hearing. 14-117-209. Assessment of lands outside district - Boundary ex-14-117-205. Land in more than one tension. county.

Effective Dates. Acts 1957, No. 171, § 10: Mar. 6, 1957. Emergency clause provided: "It has been found and declared by the General Assembly that erosion, floodwater and sediment damages in the watershed of the rivers and streams of this state are causing loss of life and damage to property and constitute a menace to the welfare of the people of this state. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, safety and welfare shall be in full force and effect from and after its passage and approval."

Acts 1959, No. 131, § 6: Mar. 3, 1959. Emergency clause provided: "It is hereby determined and declared that the organization and operation of Watershed Improvement Districts are being unduly delayed; that except for the passage of this Act, said districts will have to incur unnecessary expenses in the organization and operation of said districts. An emergency is therefore declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, it shall be in effect and full force from and after its passage and approval."

## 14-117-201. Purposes.

The purposes for which districts may be organized under this chapter shall include:

(1) The construction, operation, and maintenance of pools, lakes, reservoirs, dams, levees, ditches, canals, waterways, pumping works, and other facilities for the purpose of irrigation, flood control, and

drainage, or in the furtherance of such purposes;

(2) The construction, operation, and maintenance of levees, ditches, dams, canals, waterways, pumping works, and other facilities and improvements on lakes, rivers, bayous, and streams to provide for irrigation, flood control, and drainage, or in furtherance of such purposes;

(3) The construction, operation, and maintenance of works of improvement for the purposes of preventing erosion, floodwater, and sediment damages and for the conservation, development, utilization,

and disposal of water or in furtherance of such purposes;

(4) The construction, operation, and maintenance of reservoirs or other areas and facilities for recreation, fish and wildlife, or in the furtherance of such purposes.

**History.** Acts 1949, No. 329, § 4; 1957, No. 171, § 3; 1963, No. 110, § 1; A.S.A. 1947, § 21-904.

# 14-117-202. Petition for establishment — Engineer and survey — Bond.

(a) It shall be the duty of the court to enter upon its record an order appointing an engineer to be selected by the petitioners when a majority in number of the owners, exclusive of the owners of real property in incorporated towns or cities, of the lands or the owners of a majority in value of the lands, exclusive of the owners of real property in incorporated towns or cities, as shown by the last assessment of real property within a proposed district shall:

(1) Petition the chancery or circuit court to establish a district to embrace their property:

(A) Describing generally the region which it is intended shall be

included within the district.

(B) Setting forth:

(i) The proposed name of the district;

(ii) The purpose or purposes of the district;

(iii) The general nature of the work to be done;

(iv) The necessity of the work;

(v) The feasibility of the work; and

(vi) The estimated cost of the project, as then estimated by those filing the petition from information they have at the time, with reasonable detail and definiteness in order that the court may understand the purpose, utility, feasibility, and need or necessity for the project; and

(2) File a good bond to pay for the expenses of survey of the proposed

district, in case the district is not formed.

(b) The engineer selected by the petitioners shall be a suitable person, and if not, an engineer shall be named who is satisfactory to the court.

(c) The engineer shall give bond in a sum not less than one thousand dollars (\$1,000) to be fixed by the court for the faithful discharge of his duties. He shall be liable upon such bonds for negligence or incompetency causing loss to the district.

(d) The engineer shall forthwith proceed to make a survey and ascertain the limits of the region which would be benefited by the

proposed improvements.

(e) The engineer shall file with the chancery or circuit clerk a report showing the territory which will be benefited by the proposed improvements, giving a general idea of its character and expense, and making suggestions as to the proposed improvements and their location as he may deem advisable.

(f) The territory need not consist of contiguous parcels of land.

(g) All expenses incident to the survey and the cost of publication shall be paid by the county or counties in the ratio and proportion of benefits assessed to lands in the respective counties as the work progressed upon proper showing; but all expenses incurred by the county or counties in the creation of any district shall, upon the creation of the district, be reimbursed to the county or counties out of the proceeds of the first revenues collected by the district.

**History.** Acts 1949, No. 329, § 5; 1957, No. 171, § 4; 1963, No. 37, § 1; A.S.A. 1947, § 21-905.

#### CASE NOTES

ANALYSIS

Estimated costs. Petitioners. Territory included.

#### **Estimated Costs.**

Although the improvements may cost more than the estimated cost of the project as estimated by those then filing the petition, where many thousands of acres of rich land were involved in the district, it would not be such a great difference as to be unreasonable and not in conformity with the estimate. Pendleton v. Stuttgart & King's Bayou Drainage & Irrigation Dist., 235 Ark. 513, 360 S.W.2d 750 (1962).

#### Petitioners.

Where no fraud, duress, deception, or anything of that kind was alleged by movants in a petition who sought to have their names withdrawn after a great deal of work had been done on the project and expense incurred in connection therewith and a lengthy trial had, the court committed no error in denying their motion.

Pendleton v. Stuttgart & King's Bayou Drainage & Irrigation Dist., 235 Ark. 513, 360 S.W.2d 750 (1962).

#### Territory Included.

The inclusion in a new district of lands already in an existing district is permissible since the lands may be benefited by both drainage districts. Pendleton v. Stuttgart & King's Bayou Drainage & Irrigation Dist., 235 Ark. 513, 360 S.W.2d 750 (1962).

Where lands above overflow would receive indirect benefits as a result of the proposed improvement to the district, the proposed improvement was one in which all the landowners within the territory of the proposed district had, to a certain extent, a common interest, and they were to be included in the district. Pendleton v. Stuttgart & King's Bayou Drainage & Irrigation Dist., 235 Ark. 513, 360 S.W.2d 750 (1962).

**Cited:** Allen v. Tri-County Watershed Imp. Dist., 245 Ark. 905, 435 S.W.2d 796 (1968).

# 14-117-203. Alternative petition for establishment.

(a) If, upon the presentation of the petition for the formation of a district, provided for in § 14-117-202, a preliminary survey has been made and a report prepared with assistance from the United States Department of Agriculture, Soil Conservation Service, or from the Chief of Engineers, United States Army Corps of Engineers, or any other federal or state agency, and that report sets forth the proposed name of the district, the purpose or purposes of the district, delineates the area to be benefited, describes the general nature of the works of improvement, the necessity thereof, the feasibility thereof, and the estimated cost of the project, with reasonable detail and definiteness in order that the court may understand therefrom the purpose, utility, feasibility, and need or necessity therefor, a majority in number of the owners of title to real property and the owners of a majority in value of the real property in the proposed district, as shown by the last assessment, may present a petition to the chancery or circuit court, accompanied by the aforesaid survey and report, praying the establishment of the district.

(b) Upon the presentation of such a petition, it shall be the duty of the court to make the order establishing the district without the appointment of an engineer and without further inquiry.

(c) Any detailed plans prepared following the formation of the improvement district will be filed with the court as a supplement to the

preliminary survey and report when the plans are adopted by the board

of directors, as provided in § 14-117-401.

(d) If no such petition is filed, it shall be the duty of the court to investigate as provided in § 14-117-202 and to establish the district if it is of the opinion that the establishment thereof will be to the

advantage of the owners of real property therein.

(e) Guardians may sign the petition for their wards; trustees, executors, and administrators may sign for estates represented by them. If the signature of any corporation thereto is attested by the corporate seal, the signature shall be sufficient evidence of the assent of the corporation to the petition.

History. Acts 1949, No. 329, § 6; 1959, No. 131, § 1; 1963, No. 37, § 2; A.S.A. 1947, § 21-906.

#### CASE NOTES

#### Petitioners.

The court, in its discretion, may deny a petition that fails to contain the names of both a majority in number and in valuation of the affected landowners. Balloun v. Archer, 238 Ark. 194, 379 S.W.2d 6 (1964).

The names of petitioners who owned no land within the proposed watershed improvement district, those petitioners who died before the filing of the petition, those signatures obtained without authority of the landowners, and one who denied (without contradiction) ever signing the petition should have been removed from the petition. Balloun v. Archer, 238 Ark. 194, 379 S.W.2d 6 (1964).

Cited: Allen v. Tri-County Watershed Imp. Dist., 245 Ark. 905, 435 S.W.2d 796 (1968).

## 14-117-204. Notice and hearing.

(a) The chancery or circuit clerk shall give notice by publication for two (2) weeks in some newspaper published and having a general circulation in the county calling upon all persons owning property within the proposed district to appear before the court on some day to be fixed by the court to show cause in favor of or against the establishment of the district. If the court deems it to the best interest of the owners of real property within the proposed district that the district shall become a district under the terms of this chapter, it shall make an order upon its records establishing the property as a district subject to all the terms and provisions of this chapter.

(b) Any owner of real property within the territory of the proposed

district may petition the court to exclude his property.

(c) If the court finds that the real property would not be benefited by the improvements of the proposed district, the court, in its order, shall exclude the real property of the petitioner or petitioners from the district. However, lands shall be excluded for irrigation purposes by the order of the court upon a showing that the land is supplied by adequate irrigation from surface sources or other sources existing at time of order creating the district and, provided further, that lands so excluded shall be subordinate to all lands within the irrigation district should water from the irrigation works be desired at a later date.

**History.** Acts 1949, No. 329, § 5; 1957, No. 171, § 4; 1963, No. 37, § 1; A.S.A. 1947, § 21-905.

#### **CASE NOTES**

**Cited:** Allen v. Tri-County Watershed Imp. Dist., 245 Ark. 905, 435 S.W.2d 796 (1968).

## 14-117-205. Land in more than one county.

(a) If land in more than one (1) county is embraced in the proposed district, the petition shall be addressed to the chancery or circuit court in which the largest portion of the lands lie. All proceedings shall be had in that court, and the court shall apportion all costs incurred in the creation of the district between the county or counties in proportion to the benefits assessed to lands in each such county.

(b) Such expenses as are incurred prior to the time when the assessment is made shall be apportioned between the counties in the

proportion which the court shall deem to be just and equitable.

(c) In the event district lands are in more than one (1) county, all notices shall be published in newspapers published and having a bona fide circulation in each such county in which the district will embrace land.

(d) All of the districts shall be appropriately identified by the court, that is, they shall be numbered consecutively or shall receive names selected by the court.

**History.** Acts 1949, No. 329, § 5; 1957, No. 171, § 4; 1963, No. 37, § 1; A.S.A. 1947, § 21-905.

#### **CASE NOTES**

**Cited:** Allen v. Tri-County Watershed Imp. Dist., 245 Ark. 905, 435 S.W.2d 796 (1968).

# 14-117-206. Prompt payment of expenses required.

If the expenses incurred in the creation of a district are not promptly paid by the county or counties pursuant to the order of the court, a proceeding in mandamus shall lie to compel the payment of the expenses.

**History.** Acts 1949, No. 329, § 5; 1957, No. 171, § 4; 1963, No. 37, § 1; A.S.A. 1947, § 21-905.

#### **CASE NOTES**

**Cited:** Allen v. Tri-County Watershed Imp. Dist., 245 Ark. 905, 435 S.W.2d 796 (1968).

## 14-117-207. Effect of establishment order — Appeal.

(a) The order of the chancery or circuit court establishing the district

shall have all the force of a judgment.

(b) Any owner of real property within the district may appeal from the judgment within thirty (30) days after the judgment has been made, but if no appeal is taken within that time, the judgment shall be deemed conclusive and binding upon all the real property within the bounds of the district, and upon the owners thereof.

(c) Any owner of property in the proposed district may within a like

time appeal from any order refusing to establish the district.

**History.** Acts 1949, No. 329, § 7; 1963, No. 110, § 2; A.S.A. 1947, § 21-907.

## 14-117-208. Changing district boundaries.

(a)(1) The holder or holders of title representing in assessed value one-half (½) or more of any body of lands benefited or capable of being benefited by the works of a district may petition the chancery or circuit court which established the district to change the boundaries of the district to include that body of lands.

(2) Any owner of lands within the boundaries of a district may also petition the court to change the boundaries of the district to exclude

such lands.

(b) The petition shall describe the boundaries of the parcel or tract of

land owned by the petitioner or petitioners.

(c) The clerk shall give notice by publication for two (2) weeks in some newspaper published and having a general circulation in the county or counties within the district, calling upon all persons owning property within the district and, in the case of a proposed inclusion of lands, all persons owning property within the area proposed to be included to appear before the court on some day to be fixed by the court to show cause in favor of or against the inclusion or exclusion of lands of petitioners.

(d) If the court deems it to be to the best interest of the district that the lands be included or excluded from the district, it shall make an appropriate order upon its records changing the boundaries of the

district.

(e) If the court finds that lands should be included in the district, the court shall make a finding and order as to an equitable amount to be paid by the petitioner or petitioners in lieu of the amount the petitioners or their grantors would have been required to pay to the district as assessments had the lands been included in the district at the time the

district was originally formed. These amounts shall be divided into installments as the court may determine and shall be added to and be collected with any assessments subsequently levied against the assessment of benefits and shall be a part of the assessment of benefits.

(f) If the court finds that lands should be excluded from the district, the court shall make a finding and order as to the amount, if any, which shall be refunded by the district to any and all persons who have paid

any assessment or assessments to the district.

(g) In making this determination, the court shall consider whether the parties have realized benefits from the organization and operation of the district, and the value of those benefits as determined by the court shall be deducted from the assessments paid in by the parties.

- (h) No land excluded from the district shall be released from any obligation to pay any valid outstanding indebtedness of the district at the time of filing the petition for exclusion unless the holders of the indebtedness shall assent to the release of the lands from such obligation.
- (i) All costs of the proceedings shall be assessed against the petitioners.
- (j) Appeals from judgments of the court made pursuant to this section shall be taken by an aggrieved party in accordance with the provisions of § 14-117-207.

**History.** Acts 1949, No. 329, § 10; A.S.A. 1947, § 21-910.

#### CASE NOTES

#### Court Order.

The formation of a district was not subject to the objection that the decree did not conform to the order of the court because of the addition of lands to the district upon

the petition of the owners thereof after the court directed the formation of the district in accordance with the engineering report. Allen v. Tri-County Watershed Imp. Dist., 245 Ark. 905, 435 S.W.2d 796 (1968).

# 14-117-209. Assessment of lands outside district — Boundary extension.

- (a) If the board, upon petition of a majority in number as provided in §§ 14-117-202 and 14-117-204 14-117-206 for the establishment of districts, finds that other lands not embraced within the boundaries of the district will be affected by the proposed improvement, it shall assess the estimated benefits and damages to the lands and shall specially report to the chancery or circuit court the assessment which it has made on the lands beyond the boundaries of the district as already established.
- (b) It shall then be the duty of the court to give notice by publication for two (2) weeks in a newspaper or newspapers published in the county or counties where the lands lie, describing the additional lands which have been assessed. The owners of real property so assessed shall be

allowed thirty (30) days after the last publication of the notice to file with the clerk their protest against being included within the district.

(c) The court shall at its next session investigate the question whether the lands beyond the boundaries of the district so assessed by the board will in fact be benefited or damaged by the making of the improvement. From its finding in that regard and its order based thereon, either the property owners affected by the assessment or the board may within thirty (30) days file an appeal to the Supreme Court. If the finding and order is in favor of the inclusion of the lands, the limits of the district shall by order of the court be extended so as to embrace the lands.

History. Acts 1949, No. 329, § 11; A.S.A. 1947, § 21-911.

### Subchapter 3 — Board of Commissioners

SECTION. SECTION. 14-117-301. Members. 14-117-306. Control of construction -14-117-302. Organization. 14-117-303. Agents and employees generally. 14-117-304. Powers and duties. 14-117-305. Eminent domain.

14-117-307. Construction — Cooperation with federal government. 14-117-308. Contractors and agents. 14-117-309. Disposal of unneeded land.

Advertisement for bids.

Cross References. Tort liability immunity, § 21-9-301 et seq.

Effective Dates. Acts 1957, No. 171, § 10: Mar. 6, 1957. Emergency clause provided: "It has been found and declared by the General Assembly that erosion, floodwater and sediment damages in the watershed of the rivers and streams of this state are causing loss of life and damage to property and constitute a menace to the welfare of the people of this state. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, safety and welfare shall be in full force and effect from and after its passage and approval."

Acts 1959, No. 131, § 6: Mar. 3, 1959. Emergency clause provided: "It is hereby determined and declared that the organization and operation of Watershed Improvement Districts are being unduly delayed; that except for the passage of this Act, said districts will have to incur unnecessary expenses in the organization and operation of said districts. An emergency is therefore declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, it shall be in effect and full force from and after its passage and approval."

## 14-117-301. Members.

(a) When the chancery or circuit court has established any improvement district, the court shall appoint five (5) owners of real property within the district to act as a board of commissioners for that district, which shall be its governing body.

(b) Each of these commissioners shall take the oath of office required by Arkansas Constitution, Article 19, § 20, and shall also swear that he will well and truly assess all benefits resulting from the improvement and all damages caused thereby. Any commissioner failing to take the oath within thirty (30) days after his appointment shall be deemed to

have declined, and his place shall be filled by the court.

(c) All vacancies on the board shall be filled by the court. However, if the owners of a majority in assessed value of the real property in the district shall petition for the appointment of a particular person or persons as commissioner or commissioners, it shall be the duty of the court to appoint the person or persons so designated.

(d) The court shall remove any member of the board on the petition of owners of a majority in assessed value of the real property in the

district.

(e) The commissioners herein provided for shall receive as compensation the sum of five dollars (\$5.00) each day for attending meetings of the board, together with their necessary expenses.

**History.** Acts 1949, No. 329, §§ 8, 9; A.S.A. 1947, §§ 21-908, 21-909.

## 14-117-302. Organization.

The board shall select one (1) of their number as chairman, and a majority shall constitute a quorum.

**History.** Acts 1949, No. 329, § 8; A.S.A. 1947, § 21-908.

# 14-117-303. Agents and employees generally.

The board shall have the authority to hire all necessary agents and employees.

**History.** Acts 1949, No. 329, § 12; 1957, No. 171, § 5; 1959, No. 131, § 2; A.S.A. 1947, § 21-912.

## 14-117-304. Powers and duties.

(a) The board shall have and may exercise any functions, powers, authority, rights, and duties that permit the accomplishments of the purposes for which such districts may be created, including the investigation and, in case a plan for improvements is adopted, then the construction, maintenance, and operation of all necessary improvements, plants, works, and facilities; the acquisition by purchase, lease, gift, or condemnation of water rights and all other properties, lands, tenements, easements; and all other rights helpful in carrying out the purposes of the organization of the district.

(b) The board, its agents, and its employees shall have the right to enter upon any land within the district to make surveys and for other

purposes.

- (c) The board may also accept appropriations from the state upon such terms and conditions as may be imposed by law or regulation to be used in the furtherance of the purposes for which the district was authorized.
- (d) The board may also construct the necessary improvements and do any lawful act necessary to accomplish the purposes of the organization of the district.
- (e) In order to protect the improvements of the district from damage, the board may make and prescribe necessary regulations. The board may make regulations to define and set the rate and location of any withdrawal of waters owned, acquired, or developed by the district and transferred by natural or man-made channels. The board may also make regulations governing the operation of the works of the district and the delivery of water owned or acquired by it to users and the performance of any of its other functions. The willful violation of these regulations shall constitute a misdemeanor under the laws of this state punishable by a fine not to exceed one thousand dollars (\$1,000).

**History.** Acts 1949, No. 329, § 12; A.S.A. 1947, § 21-912; Acts 1989, No. 618, 1957, No. 171, § 5; 1959, No. 131, § 2; § 2.

### 14-117-305. Eminent domain.

(a) The right and power of eminent domain heretofore conferred shall, as to watershed improvement districts organized under this chapter for the purpose of cooperation under Public Law 83-566, as amended, include the power to enter upon, take, and condemn private property, located either within or without the boundaries of the district, for the construction or erection of works or improvements necessary to conserve soil and water resources; prevent erosion, floodwater, and sediment damage; construct diversion systems, floodwater retarding structures, floodways, levees, desilting basins, channels, rights-of-way, including rights-of-way for improvements in upland areas upstream from district lands when such upstream areas are sources of floodwater or sediment which causes damage to district lands; or other lawful purposes. The term "or other lawful purposes," as used in this section, shall include a watershed improvement plan in its entirety, or any integral part thereof, necessary to carrying out the plans of the district.

(b) Condemnation proceedings instituted under this section shall be conducted in the manner as is now provided by §§ 18-15-1001 —

18-15-1010.

(c) Legal title to all property so acquired shall vest in the district for the uses and purposes of the district.

**History.** Acts 1949, No. 329, § 12; 1957, No. 171, § 5; 1959, No. 131, § 2; A.S.A. 1947, § 21-912.

U.S. Code. Public Law 83-566, referred to in this section, is codified as 16 U.S.C. §§ 1001-1007.

#### CASE NOTES

Discretion.

By conferring on the district the power of eminent domain, the state left largely to the discretion of the district the location and area of the land to be taken; and one seeking to show that the taking has been arbitrary or excessive shoulders a heavy burden of proof in attempting to persuade the court to overrule the district's judgment. Gray v. Ouachita Creek Watershed Dist., 234 Ark. 181, 351 S.W.2d 142 (1961).

### 14-117-306. Control of construction — Advertisement for bids.

- (a) The board shall have control of the construction of the improvements in their districts.
- (b) It may advertise in local or state papers or papers published in other states for proposals for doing any work by contract. No work exceeding one thousand dollars (\$1,000) shall be let without public advertisement. The board may accept or reject any proposals.

**History.** Acts 1949, No. 329, § 31; 1969, No. 152, § 1; A.S.A. 1947, § 21-931.

# 14-117-307. Construction — Cooperation with federal government.

- (a) If the improvements are undertaken in cooperation with the United States, the board may enter into an agreement providing for the construction of the works of improvement and awarding of contracts therefor, to be by, and under the control and supervision of, the United States or any agency or instrumentality thereof.
- (b) In that event, the advertisement, award, and carrying out of the contracts shall be in accordance with the provisions of law applicable to the federal agency.

**History.** Acts 1949, No. 329, § 31; 1969, No. 152, § 1; A.S.A. 1947, § 21-931.

# 14-117-308. Contractors and agents.

- (a) All contractors shall be required to give bond for the faithful performance of the contracts awarded them, with good and sufficient securities, in an amount to be fixed by the board. The board shall not remit or excuse the penalty or forfeiture of the bond or the breaches thereof.
  - (b) The board may:
- (1) Appoint all necessary agents for carrying on the work and fix their pay;
- (2) Buy and sell all necessary material and implements as may be on hand, which may not be necessary for the completion of the improvement under way, or which may have been completed;
- (3) Make all such contracts in the prosecution of the work as may best subserve the public interest.

SECTION.

(c) It shall be the duty of the board to have the amount of work done by any contractor estimated, from time to time as may be desirable, by the engineer selected by the board. The board shall draw its warrants in favor of the contractor for not more than ninety percent (90%) of the amount of work so reported, reserving the remainder until it has been ascertained that the work has been completed according to contract and is free from liens.

**History.** Acts 1949, No. 329, § 32; 1963, No. 110, § 5; A.S.A. 1947, § 21-932.

## 14-117-309. Disposal of unneeded land.

The board may determine, by resolution, that any real or personal property is no longer needed for the uses and purposes of the district and may thereafter sell, lease, or otherwise dispose of the property upon such terms and in such manner as appear to the board to be for the best interest of the district.

**History.** Acts 1949, No. 329, § 12; 1957, No. 171, § 5; 1959, No. 131, § 2; A.S.A. 1947, § 21-912.

## Subchapter 4 — District Operation

SECTION.

14-117-401. Plans — Construction areas. expenses. 14-117-402. Contracts between district 14-117-414. Borrowing money and issuand United States. ing bonds. 14-117-403. Assessment of benefits and 14-117-415. Court order as to bonds. damages. 14-117-416. Refunding bonds. 14-117-404. Filing of assessment. 14-117-417. Security for bonds - Levy 14-117-405. Notice and hearing on asand collection of tax. sessment — Appeal. 14-117-418. Default in bond payment. 14-117-406. Acquiescence in assessment 14-117-419. Records and reports. of damages — Demand for assessment — Condemna-14-117-420. Taxation for operation and service of district propertion. 14-117-421. Extension of taxes on books 14-117-407. Alteration of plans. 14-117-408. Reassessment of benefits -— Collection. Appeals. 14-117-422. Time for payment of taxes — Installments. 14-117-409. Additional work or improvements - Reassessment -14-117-423. Delinquencies on tax pay-Appeals. 14-117-410. Inclusion of bond interest 14-117-424. Notice of pendency of suit. 14-117-425. Trial generally - Sale of with tax — Exception. 14-117-411. Payment of assessment. land to bidders. 14-117-412. Levy of assessment - Inter-14-117-426. Trial procedure - Sale of land to district. est. 14-117-427. Right of redemption. 14-117-413. Levy of tax — Preliminary

Effective Dates. Acts 1957, No. 171, § 10: Mar. 6, 1957. Emergency clause provided: "It has been found and declared by the General Assembly that erosion, floodwater and sediment damages in the watershed of the rivers and streams of this state are causing loss of life and damage to property and constitute a menace to the welfare of the people of this state. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, safety and welfare shall be in full force and effect from and after its passage and approval."

Acts 1959, No. 131, § 6: Mar. 3, 1959. Emergency clause provided: "It is hereby determined and declared that the organization and operation of Watershed Improvement Districts are being unduly delayed; that except for the passage of this Act, said districts will have to incur unnecessary expenses in the organization and operation of said districts. An emergency is therefore declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, it shall be in effect and full force from and after its passage and approval."

Acts 1971, No. 156, § 3: approved Feb. 26, 1971. Emergency clause provided: "It is hereby found and declared that under existing law Watershed Improvement Districts are unable to carry out works of improvement on an area basis and for such reason the loss of Federal Aid in

Watershed projects is threatened; that there is an urgent need for the protection afforded to lands and property of this State by participating in and carrying out such Federal Aid projects; that the enactment of this Bill will enable Watershed Improvement Districts to obtain the financial and other assistance available under Federal Legislation for preserving and protecting the State's land and water resources; therefore, an emergency is declared to exist, and this Act being necessary for the protection of the public health and safety of the people of this State, an emergency is therefore declared, and this Act shall take effect and be in force from and after its passage."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

## 14-117-401. Plans — Construction areas.

(a) Plans prepared by "local organizations," as defined by the Watershed Protection and Flood Prevention Act, with assistance from the United States Department of Agriculture, Soil Conservation Service, and plans prepared by the Department of the Army, Chief of Engineers, or any other federal or state agency may be adopted by the board of directors and when so adopted shall become the plan of improvement of the district and may be used in lieu of the engineer's survey and other requirements pertaining thereto mentioned in § 14-117-202, or as a supplement to the preliminary survey and report filed under the provisions of § 14-117-203. As soon as the board has adopted its plan for improvement of the district and has ascertained the cost thereof, it shall file the plan with the chancery or circuit clerk. The plans shall be accompanied by a map showing the location of the proposed improvements.

(b)(1) If, in the preparation of the final work plan, it is determined by the board that the location and character of the works of improvement are so varied that it would be impracticable to let contracts on all of them in the same year, or if federal funds would not be available for all of them in the same year, the final work plan may be segregated or divided into one (1) or more units of construction constituting any work or group of works proposed in the final work plan which can be constructed and operated as a feasible unit alone and which can also be operated economically in conjunction with the other proposed works in the plan.

(2) The final work plan shall indicate the area included in each unit of construction and establish each such area as a separate construction area, set forth the percentage or portion of the total project costs allocated to each construction area, and delineate the lands in each construction area which, on the basis of preliminary estimates, will derive some benefit from the works of improvement to be installed

therein.

(3) Each construction area shall be appropriately identified by name

and number, such as "Construction Area No. ....".

(4) The determination of the board that the works of improvement proposed in the final work plan, even though divided into units of construction, do not lack unity or singleness of purpose and that the works in each unit of construction confer some benefit on the lands therein shall be final and conclusive.

(c)(1) The board of commissioners shall have the authority to let contracts for carrying out the works of improvement on a construction area basis, to borrow money and issue notes or bonds, and to assess benefits and damages on a construction area basis.

(2) A separate assessment book shall be prepared and maintained for

each construction area.

- (3) The tax levied under § 14-117-413 to secure and repay notes or bonds shall be limited to and be a lien only on the lands located within each construction area found to be benefited by the works installed in the construction area, and that fact shall be indicated on the face of the notes or bonds.
- (4) All published notices with respect to the assessment of benefits and damages and the borrowing of money and issuance of notes or bonds shall list the lands according to the construction area in which they are located.

**History.** Acts 1949, No. 329, § 13; 1957, No. 171, § 6; 1959, No. 131, § 3; 1963, No. 37, § 3; 1971, No. 156, § 1; A.S.A. 1947, § 21-913.

**U.S. Code.** The Watershed and Flood Prevention Act, referred to in this section, is codified as 16 U.S.C. §§ 1001-1007.

### 14-117-402. Contracts between district and United States.

(a) The board is authorized to:

(1) Cooperate with the United States or any agency or instrumentality thereof, hereinafter referred to as the United States, in the development of plans for the construction, operation, and maintenance of any facilities which the district is authorized to construct, operate, and maintain;

(2) Negotiate a contract with the United States or give such assurance as may be required by the United States for the construction, operation, and maintenance of such facilities or any part thereof by the

United States.

(A) The contract or assurance may provide for the payment by the district to the United States of the agreed costs thereof in the form of construction charges, operation and maintenance charges, water rental, or service charges.

(B) The construction charges may include the cost of works of improvement for irrigation, drainage, flood control, prevention of seepage of irrigated lands, prevention of erosion, floodwater, and sediment damages, and the conservation, development, utilization,

and disposal of water.

- (C) The contract or assurance may provide for the repayment of the various charges by the district primarily or exclusively from revenue to be derived by the district from the sale under contract between the district and its water users from the district works, with payment to be made either in the form of agricultural products or cash. However, if sufficient revenue is not available from this source or if the district was organized primarily for purposes other than irrigation, then the board shall have authority to assess benefits against the property within the district for the purpose of repaying the obligations of the district under the terms of the contract with or assurances given to the United States.
- (D) The contract or assurance may provide that the district shall furnish lands, easements, and rights-of-way and that property so acquired by the district may be conveyed to the United States insofar as the property may be required for the construction, operation, and maintenance of works thereon by the United States for the benefit of the district.
- (E) The contract or assurance may provide that the district shall save and hold harmless the United States from any liability or damages due to or arising out of the construction, operation, and maintenance of any of the works.

(b) Until all moneys receivable by the United States from the district under the contract or assurance shall have been fully paid, the boundaries of the district shall not be altered without the consent of the United States.

(c) Any indebtedness to the United States shall be and remain a prior charge against the lands of the district. It shall be paid by sale or rental

of water or service under contract with the landowners of the district, by the annual levy of assessments by the commissioners against the district lands or by advance toll charge, all as herein provided, and the obligation to the United States shall so remain prior to any subsequent

obligation of the district.

(d)(1) After the terms of the contract or assurance have been negotiated with the United States, the board shall petition the chancery or circuit court for the approval, if necessary, of a bond issue or other evidence of indebtedness by the district for the purpose of paying for preliminary expenses and the cost of acquisition of lands, easements, and rights-of-way which may be needed in order to carry out the plan of improvement.

- (2) The chancery or circuit clerk shall thereupon give notice by publication for two (2) weeks in some newspaper published and having a general circulation in the county or counties within the district, calling upon all persons owning property within the district to appear before the court upon some date not less than thirty (30) days nor more than ninety (90) days from the date of the last publication, to be fixed by the court, to show cause in favor of or against the issuance of bonds or other evidence of indebtedness.
- (3) If upon final hearing the court deems it to be in the best interest of the owners of real property within the district, the court shall enter an order authorizing the issuance of bonds or other evidence of indebtedness. However, if it is determined by the court that a majority in number of the holders of title to the lands within the district and the owners of a majority in value of the lands therein, as shown by the last assessment, oppose the issuance of bonds or other evidence of indebtedness, the court shall enter a decree disapproving the issuance of bonds or other evidence of indebtedness.
- (4) The order of the court shall have the force of a judgment, and any aggrieved party may appeal from the order as provided in § 14-117-207.

**History.** Acts 1949, No. 329, § 14; 1957, No. 171, § 7; 1963, No. 37, § 4; 1963, No. 110, § 3; A.S.A. 1947, § 21-914.

#### **CASE NOTES**

Majority of Landowners.

Where petitions against ratification of contract under this section were signed by husband alone, the fact that their land was held by entirety estate with wife did not mean that wives could be counted to establish that majority of landowners were against ratification, as the signature of the wife was necessary on the petition and later oral testimony that wife was against contract was insufficient for inclusion of wife among number of landowners against ratification. Gardner v. Bullard, 241 Ark. 75, 406 S.W.2d 368 (1966).

## 14-117-403. Assessment of benefits and damages.

(a)(1) As soon as plans for the improvement work have been completed or a contract has been entered into with the United States, the board shall proceed to assess the lands within the district on the basis of benefits accruing from works of improvement for irrigation, drainage, flood control, prevention of seepage of irrigated lands, prevention of erosion, floodwater, and sediment damages, and the conservation, development, utilization, and disposal of water.

(2) A separate book shall be maintained with respect to assessments of benefits on the basis of benefits derived from works of improvement for irrigation, drainage, flood control, prevention of seepage of irrigated lands, prevention of erosion, floodwater, and sediment damages, and the conservation, development, utilization, and disposal of water.

(3) The board shall cause to be inscribed in the book the description of each tract of land and shall assess the value of the benefits to accrue to each tract by reason of the improvements and enter the assessment of benefits opposite the description, together with an estimate of what the landowner will probably have to pay on the assessment.

(4) Their assessment shall embrace not merely the land but all public and corporate roads, railroads, tramroads, and other improve-

ments on lands that will be benefited by the district.

(5) They shall place opposite each tract of land the name of the owner, as shown by the last county assessment, but a mistake in the name shall not vitiate the assessment. They may correct evident errors which occur in the county assessment list.

(b) If any landowner, any private corporation, or any other drainage district has made any improvements or works that can be profitably used as a part of the general system, the value of those improvements or works shall be assessed by the board, shall separately appear upon their assessment, and shall be paid for by the district, either in cash or by reduction of assessments.

(c) The board shall also assess all damages that will accrue to any landowner by reason of the proposed improvement, including all injury to lands taken or damaged. Where they return no such assessment of damages as to any tract of land, it shall be deemed a finding by them that no damage will be sustained.

**History.** Acts 1949, No. 329, § 15; 1957, No. 171, § 8; A.S.A. 1947, § 21-915.

## 14-117-404. Filing of assessment.

(a) When their assessment is completed, the board shall subscribe an original and one (1) copy of the assessment and deposit the original with the circuit or chancery clerk, where it shall be kept and preserved as a public record.

(b) The copy shall be certified by the clerk and returned to the board

to be preserved with the records of the district.

**History.** Acts 1949, No. 329, § 16; A.S.A. 1947, § 21-916.

## 14-117-405. Notice and hearing on assessment — Appeal.

(a) Upon the filing of the assessment, the clerk shall give notice of that fact by publication for two (2) weeks in some weekly newspaper issued in each of the counties in which the lands of the district may lie.

(b) The notice shall give a description of the lands assessed and shall state that the owners of the lands, if they desire, may appear before the court on a certain day, naming the day, and present complaints, if they have any, against the assessment of any lands in the district.

(c) The day so named shall be more than ten (10) days after the last

publication of the notice.

(d) If no complaint is made as herein provided, the assessment as

deposited with the clerk shall be conclusive.

(e) Any owner of real property within the district who perceives himself to be aggrieved by the assessment of benefits or damages or deems that the assessment of any land in the district is inadequate shall present his complaint to the court on the day named in the notice.

(f) The court shall consider the complaint and enter its finding thereon, either confirming the assessment or increasing or diminishing

the assessment.

(g) Its findings shall have the force and effect of a judgment, from which an appeal may be taken within thirty (30) days, either by the property owners or by the board of the district.

**History.** Acts 1949, No. 329, § 16; A.S.A. 1947, § 21-916.

# 14-117-406. Acquiescence in assessment of damages — Demand for assessment — Condemnation.

Any property owner may accept the assessment of damages in his favor made by the board, or acquiesce in their failure to assess damages in his favor, and shall be construed to have done so unless he gives to the board, within thirty (30) days after the assessment is filed, notice in writing that he demands an assessment of his damages by a jury. In that event, the board shall institute an action to condemn the lands that must be taken or damaged in the making of the improvement, which action shall be in accordance with the proceedings provided in § 14-117-305.

**History.** Acts 1949, No. 329, § 17; A.S.A. 1947, § 21-917.

#### CASE NOTES

Attorney's Fees, Etc.

A landowner may recover attorney's fees, court costs, and other expenses in-

curred by him in defense of condemnation action, when a condemning agency fails to act in good faith in instituting and later abandoning condemnation proceedings. Des Arc Bayou Watershed Imp. Dist. v. Finch, 271 Ark. 603, 609 S.W.2d 70 (1980).

## 14-117-407. Alteration of plans.

The board may at any time alter the plans for improvement, but before constructing the work according to the changed plans, the changed plans shall be filed with the circuit or chancery clerk and notice of the filing shall be given by publication for one (1) insertion in some newspaper issued and having a bona fide circulation in each of the counties in which there are lands within the district.

**History.** Acts 1949, No. 329, § 18; A.S.A. 1947, § 21-918.

## 14-117-408. Reassessment of benefits — Appeals.

(a)(1) If, by reason of a change of plans pursuant to § 14-117-407, either the board or any property owners deem that the assessment on any property has become inequitable, they may petition the court, which may thereupon refer the petition to the board. The board shall then reassess the property mentioned in the petition, increasing the assessment if greater benefits will be received and allowing damages if less benefits will be received or if damages will be sustained.

(2) In no event shall a reduction of assessments be made after the assessment of benefits has been confirmed by the court as provided in § 14-117-405, but any reduction in benefits shall be paid for as damages. The claim for the damages shall be secondary and subordinate to the rights of the holders of bonds or other obligations or evidence

of indebtedness which have heretofore been issued.

(3) From the action of the board in the matter, the property owners shall have the same right of appeal that is herein provided for in the

case of the original assessment.

(b)(1) The board shall have the power to make a reassessment of the benefits not more often than once a year. The reassessment shall be made, advertised, and equalized as is provided for the original assessment of benefits.

(2) All appeals of landowners objecting to the reassessment must be taken and perfected within thirty (30) days from the time of the action

of the chancery or circuit court thereon.

(3) If any obligation of the district shall be outstanding at the time of the reassessment, the liability thereon of real property against which assessments of benefits have been confirmed shall be no less than the liability of the property by reason of the original assessment.

**History.** Acts 1949, No. 329, §§ 18, 19; A.S.A. 1947, §§ 21-918, 21-919.

# 14-117-409. Additional work or improvements — Reassessment — Appeals.

(a) After the work contemplated by the original plans has been completed, the board may file with the circuit or chancery clerk of the county where the district was first organized plans for additional work

or improvements in the district.

(b) The clerk shall give notice by publication for two (2) weeks in some newspaper or newspapers published and having a general circulation in the county or counties within the district, calling upon all persons owning property within the district to appear before the court on some date not less than thirty (30) days nor more than ninety (90) days from the last publication, to be fixed by the court, to show cause in favor of or against the proposal.

(c) If, upon final hearing, the court deems it to the best interest of the owners of real property within the district, the court shall enter an order ratifying and approving the additional work or improvements. However, if it is determined by the court that a majority in number of the holders of title to the lands within the district and the owners of a majority in value of the lands therein, as shown by the last assessment, oppose the proposal for additional work or improvement, the court shall enter a decree disapproving the proposed additional work or improvements.

(d) If the proposal is approved by the order of the court, the board may proceed with the assessment of benefits in accordance with the provisions of this chapter.

(e) From the action of the court any party aggrieved, including the commissioners of the district, may take an appeal, but the appeal must

be taken and perfected within thirty (30) days.

(f) The proceedings in the chancery or circuit court shall be deemed matters of public interest and heard at the earliest possible moment.

(g) When any such reassessment of benefits has been made and stands confirmed, it shall be the assessment of benefits until another reassessment has been made as provided in this chapter, and levies of the taxes on the reassessed benefits shall be made and collected in the same manner as levies on the original assessment of benefits and shall be a first lien on the lands of the district from the time they are made.

**History.** Acts 1949, No. 329, §§ 20, 21; A.S.A. 1947, §§ 21-920, 21-921.

## 14-117-410. Inclusion of bond interest with tax — Exception.

The amount of interest which will accrue on bonds issued by the districts shall be included and added to the tax, but the interest to accrue on account of the issuing of the bonds shall not be construed as a part of the cost of construction in determining whether or not the expense and the costs of making the improvements are or are not equal to or in excess of the benefits assessed.

**History.** Acts 1949, No. 329, § 29; 1963, No. 110, § 4; A.S.A. 1947, § 21-922.

## 14-117-411. Payment of assessment.

(a) When assessments of benefits are made, the landowners shall have the privilege of paying the assessments in full within thirty (30)

days after the assessment becomes final.

(b) However, all such assessments shall be made payable in installments so that not more than ten percent (10%) shall be collectible in any one (1) year against the wishes of the landowner. In the event that any landowner avails himself of this indulgence, the deferred installments of the assessed benefits shall bear interest at the rate of six percent (6%) per annum and shall be payable only in installments as levied.

(c) If any landowner shall pay in full the assessment of benefits against his land as herein provided, the land shall not be further liable by reason of the assessment or any reassessment thereof except a reassessment because of changed plans as provided in § 14-117-408. It shall then be liable only to the extent of the increase in assessment, if any, because of the greater benefit thereby received. However, in case of any such additional assessment for greater benefit, any landowner who shall have paid his previous assessment in full shall have the privilege of paying in full the increase in assessment in the manner provided in this section.

**History.** Acts 1949, No. 329, § 22; 1963, No. 110, § 4; A.S.A. 1947, § 21-922.

## 14-117-412. Levy of assessment — Interest.

The levy of the assessment may be made by way of proportional amounts of the total assessed benefits. Interest need not be calculated until it is necessary to do so to avoid exceeding the total amount of benefits and interest, or the interest may be first collected.

**History.** Acts 1949, No. 329, § 22; 1963, No. 110, § 4; A.S.A. 1947, § 21-922.

## 14-117-413. Levy of tax — Preliminary expenses.

- (a) At the same time that the assessment of benefits is filed or at any subsequent time when called upon by the board, the circuit or chancery court shall enter upon its records an order, which shall have all the force of a judgment providing that there shall be assessed upon the real property of the district a tax sufficient to pay the estimated cost of the improvement, with ten percent (10%) added for unforeseen contingencies.
- (b) The tax is to be paid by the real property in the district in proportion to the amount of the assessment of benefits thereon and shall be paid in annual installments payable not to exceed ten percent (10%) for any one (1) year, as provided in the order.

(c) The tax so levied shall be a lien upon all the real property in the district from the time that the lien is levied by the circuit or chancery court, shall be entitled to preference over all demands, executions, encumbrances, or liens whensoever created, and shall continue until the assessment, with penalty and costs that may accrue thereon, shall have been paid.

(d) The remedy against such assessment of taxes shall be by appeal. The appeal must be taken within twenty (20) days from the date of the order by the circuit or chancery court. On such appeal the presumption

shall be in favor of the legality of the tax.

(e) Any owner of real property within the district may by mandamus compel compliance by the circuit or chancery court with the terms of this section.

(f) If the board does not deem it to the advantage of the district to proceed immediately with the construction of the improvement upon the filing and confirmation of the assessment of benefits, it may report to the circuit or chancery court the rate of taxation necessary to be levied to pay the preliminary expenses of the district. Thereupon, it shall be the duty of the circuit or chancery court to make a levy of taxes upon the real property in the district sufficient to pay the preliminary expenses, with ten percent (10%) added for unforeseen contingencies. This tax shall be extended upon the tax books of the county and collected along with other taxes in the same manner as the taxes levied for construction purposes, as provided in this chapter.

History. Acts 1949, No. 329, § 23; A.S.A. 1947, § 21-923.

## 14-117-414. Borrowing money and issuing bonds.

(a) The board may petition the chancery or circuit court for authority to borrow money or issue negotiable bonds, and the court shall cause a public hearing to be held with respect to the petition in accordance with the same procedure for the issuance of bonds in connection with contracts with the United States as set forth in § 14-117-402.

(b) The petition of the board shall state whether it is desired that the bonds shall be made payable from the proceeds of revenues derived from the sale or delivery of water by the district or shall be made payable from the proceeds of assessments against the real property within the district. The order of the court authorizing the issuance of the bonds shall specify which of the sources shall be liable for the

payments of the principal of and interest on the bonds.

(c) If the board is authorized to do so upon the presentation of the petition to the court, and after compliance with the provisions of § 14-117-402, it may borrow money at a rate of interest determined by the board from any agency of the United States or any other available lending source, may issue promissory notes, negotiable bonds, or such other evidence of indebtedness as required by the lender therefor,

signed by the members of the board, and may pledge or assign all assessments and revenues for the repayment thereof.

(d) If promissory notes are issued, the board is authorized to execute mortgages on real or personal property owned by the district or assign or pledge such revenues and assessments as may be required by the lender as security for the repayment of the loan. No promissory notes issued under the terms of this chapter shall run for more than fifty (50)

(e) No bonds issued under the terms of this chapter shall run for more than fifty (50) years. All issues of bonds may be divided so that a portion of them may mature each year as the assessments are collected, or they may all be made payable at the same time, with proper

provision for a sinking fund.

(f) In all other respects, the board shall determine the form and

denominations of the bonds.

(g) The board may sell, exchange, or hypothecate the bonds from time to time and at prices which best serve the interests of the district, provided that any sale or exchange of the bonds at less than ninety percent (90%) of their par value shall first have the approval of the chancery or circuit court.

**History.** Acts 1949, No. 329, § 24; 1981, No. 425, § 37; A.S.A. 1947, § 21-1959, No. 131, § 4; 1963, No. 37, § 5; 924.

## 14-117-415. Court order as to bonds.

(a) After issuing any bonds and before their sale, exchange, or hypothecation, the board shall petition the chancery or circuit court for an order approving the legality and regularity of all proceedings leading up to the issuance of the bonds. This order shall have the force of a judgment and shall be subject to appeal to the Supreme Court within thirty (30) days by the board or by any owner of real property against which assessments of benefits by the district have been confirmed.

(b) If the order of the court shall specify that the bonds shall be made payable from revenues from the sale or delivery of water, the order shall declare specifically the revenues or portion thereof that shall be pledged to secure the payment of the principal of and interest upon the bonds. The order of the court shall constitute a sufficient pledge to secure all payments of all bonds that may be issued in pursuance thereof, and all revenue so designated shall be applied first to the payment of the bond requirements. No tax shall be levied by or on behalf of the district against any real property within the district to pay any part of the principal or interest of such bonds.

(c) If the order of the court authorizing the issuance of bonds shall specify that they shall be made payable from the proceeds of assessments, then the order shall provide for the levying of a tax against the real property within the district in proportion to the assessment of benefits for the improvement, in the same manner and with the same

effect as provided in § 14-117-413.

(d) If the order of the court authorizing the borrowing of money and the issuance of promissory notes shall specify that they shall be payable from the proceeds of assessments, then the order shall provide for the levying of a tax against the real property within the district in proportion to the assessment of benefits for the improvements, in the same manner and with the same effect as provided in § 14-117-413. The indebtedness arising from the issuance of the promissory notes shall be and remain a prior charge against the lands of the district, as provided in § 14-117-402.

**History.** Acts 1949, No. 329, § 24; 1981, No. 425, § 37; A.S.A. 1947, § 21-1959, No. 131, § 4; 1963, No. 37, § 5; 924.

## 14-117-416. Refunding bonds.

Refunding bonds may be issued and may be sold, exchanged, or hypothecated under the procedure provided in §§ 14-117-414 and 14-117-415.

**History.** Acts 1949, No. 329, § 24; 1981, No. 425, § 37; A.S.A. 1947, § 21-1959, No. 131, § 4; 1963, No. 37, § 5; 924.

## 14-117-417. Security for bonds — Levy and collection of tax.

All bonds issued under the terms of this chapter that are made payable from the proceeds of assessments shall be secured by a lien on all lands in the district unless the district shall be able to sell bonds payable out of water revenue only. The board shall see to it that a tax is levied annually and collected under the provisions of this chapter, so long as it may be necessary to pay any bond issued or obligation contracted under its authority. The making of the assessment or levy and collection may be enforced by mandamus.

**History.** Acts 1949, No. 329, § 25; A.S.A. 1947, § 21-925.

## 14-117-418. Default in bond payment.

(a) If any bond, or interest coupon on any bond, issued by the board is not paid within thirty (30) days after its maturity, it shall be the duty of the circuit or chancery court of the proper county, on the application of any holder of a bond or interest coupon so overdue, to order the collection of the taxes as provided in § 14-117-417. At its discretion, the court may appoint a receiver therefor.

(b) The proceeds of the taxes and collections shall be applied, after payment of costs, first to overdue interest, and then to payment pro rata of all bonds issued by the board which are then due and payable.

(c) The board or receiver may be directed by suit to foreclose the lien of the taxes on the lands.

- (d) Suits so brought by a receiver shall be conducted in all matters as suits by the board, as provided in §§ 14-117-423 14-117-426, and with like effect.
- (e) The decrees and deeds herein shall have the same presumptions in their favor.
- (f) However, when all such sums have been paid, the receiver shall be discharged, and the affairs of the district shall be conducted by the board as provided in this subchapter.

**History.** Acts 1949, No. 329, § 25; A.S.A. 1947, § 21-925.

## 14-117-419. Records and reports.

(a) The board shall also keep the original itemized bills and accounts of all financial transactions and all warrants which have been paid. Each warrant shall state on its face the service for which it was rendered, the person to whom paid, and the amount of the warrant.

(b) On or before March 1 of each year, the board shall file with the circuit or chancery clerk a sworn statement of the financial condition of the district, to cover the year ending on December 31 preceding. The

report shall contain, among other things:

(1) A statement of the cash on hand as of January 1 of the year for which the report is made, together with all other assets of the district;

(2) The total receipts for the preceding year;

- (3) The disbursements for administration, construction, and maintenance of bonds redeemed, and for interest paid on outstanding bonds; and
- (4) Interest due on outstanding bonds, together with all other indebtedness of the district.
- (c) In districts with revenues, from whatever source derived, in excess of five thousand dollars (\$5,000) per year, the books, records, and last annual report of the district shall be examined at least one (1) time a year by a certified public accountant. The accountant shall file a report of the examination with the circuit or chancery clerk within thirty (30) days after completing the examination.

(d) The accountant shall recommend the form and methods for keeping books and records and for making the reports of the district.

(e) The expense of the examination shall be paid as a part of the expenses of the district.

(f) All accounts of the district shall be open for inspection by any person lawfully entitled to inspect them.

(g) The failure of any of the officials named in this section to perform the duties and acts required herein shall be a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense. For the making of a false or fraudulent report, the person so making shall be guilty of perjury and punished accordingly.

**History.** Acts 1949, No. 329, § 26; A.S.A. 1947, § 21-926; Acts 1987, No. 472, § 2.

**Publisher's Notes.** Acts 1987, No. 472, § 1, provided that there are many small levee and drainage districts and improvement project areas of conservation districts with revenues of \$5,000 per year or less; under current law, the costs of formal audits have become a burden to the small districts and should be removed.

# 14-117-420. Taxation for operation and service of district properties.

The districts shall have authority to levy and collect taxes to secure funds to maintain, repair, and operate all plants, properties, and improvements of the district and to give and maintain proper service for the purposes of its organization.

**History.** Acts 1949, No. 329, § 27; A.S.A. 1947, § 21-927.

### 14-117-421. Extension of taxes on books — Collection.

(a) The amount of the taxes provided for in this chapter shall be annually extended upon the tax books of the county and collected by the collector of the county along with the other taxes, and for his services in making the collection the collector shall receive a commission as provided by law.

(b) Collections shall be paid over to the board of the respective district by the collector at or before the time that he is now required to

make settlement with the county treasurer for general taxes.

**History.** Acts 1949, No. 329, § 28; A.S.A. 1947, § 21-928.

## 14-117-422. Time for payment of taxes — Installments.

(a) All taxes levied under the terms of this chapter shall be deemed to be due and payable at any time from the third Monday in February to and including October 1 and shall be payable, at the option of the taxpayer, in installments as follows:

(1) The first installment of one-fourth  $(\frac{1}{4})$  of the amount of the taxes shall be due and payable on and from the third Monday in February to

and including the third Monday in April;

(2) The second installment of one-fourth (1/4) shall be due and payable on and from the third Monday in April to and including the third Monday in July; and

(3) The third installment of one-half ( $\frac{1}{2}$ ) shall be due and payable on

and from the third Monday in July to and including October 1.

(b) All such taxes remaining unpaid after the periods above specified shall be considered as delinquent.

**History.** Acts 1949, No. 329, § 29; A.S.A. 1947, § 21-929.

## 14-117-423. Delinquencies on tax payment.

(a) If any taxes levied in pursuance of this chapter are not paid at maturity, the collector shall not embrace the taxes in the taxes for which he shall sell the lands, but he shall add to the amount of the tax a penalty of ten percent (10%).

(b) The board shall enforce the collection by chancery proceedings in a court of the county in which the lands are situated having chancery

jurisdiction.

(c) The court shall give judgment against the lands for the amount of the taxes and the penalty of ten percent (10%), plus interest on the delinquent taxes and penalty at the rate of six percent (6%) per annum, and all costs of the proceedings.

(d) Such judgments shall provide for the sale of the delinquent lands for cash by a commissioner of the court, after advertisement as set out

in § 14-117-425.

(e) The proceedings and judgment shall be in the nature of proceedings in rem, and it shall be immaterial that the ownership of the lands is incorrectly alleged in the proceedings.

(f) The judgment shall be enforced wholly against the lands and not

against any other property or estate of the defendants.

(g) All or any part of the delinquent lands for each of the counties may be included in one (1) suit for each county, instituted for the collection of the delinquent taxes, as aforesaid.

**History.** Acts 1949, No. 329, § 29; A.S.A. 1947, § 21-929.

## 14-117-424. Notice of pendency of suit.

VS.

Delinquent Lands.

(Then shall follow a list of supposed owners, with a descriptive list of the delinquent lands, and amounts due thereon respectively as aforesaid), and the public notice may conclude in the following form:

All persons and corporations interested in the lands are notified that they are required by law to appear within four (4) weeks and make defense to the suit, or the same will be taken for confessed and final judgment will be entered directing the sale of the lands for the purpose of collecting the taxes, together with the payment of interest, penalty and cost allowed by law.

Clerk of the Court."

**History.** Acts 1949, No. 329, § 29; A.S.A. 1947, § 21-929.

## 14-117-425. Trial generally — Sale of land to bidders.

(a) The suit shall stand for trial at the first term of court after the complaint may be filed if the four (4) weeks shall expire either before the first day of the term or during the term of court to which the suit is brought unless a continuance is granted, for good cause shown, within the discretion of the court. The continuance for good cause shown may be granted as to a part of the lands or defendants without affecting the duty of the court to dispose finally of the others as to whom no

continuance may be granted.

(b) In all cases where notice has been properly given as provided in \$ 14-117-424 and no answer has been filed or, if filed, the cause has been decided for the plaintiff, the court, by its decree, shall grant the relief prayed for in the complaint and shall direct the commissioner to sell the lands described in the complaint at the courthouse door of the county wherein the decree is entered, at public outcry, to the highest and best bidder for cash in hand, after having first advertised the sale weekly for two (2) weeks, consecutively, in some newspaper published in the county, if there is one, and, if there is no newspaper, then that the advertisement be published in some newspaper in an adjoining county. The advertisement may include all lands described in the decree.

(c) If all the lands are not sold on the day as advertised, the sale shall

continue from day to day until completed.

(d) The commissioner shall by proper deeds convey to the purchaser the lands so sold. The title to the lands shall thereupon become vested in the purchaser as against all others whomsoever, saving to infants and to insane persons having no guardian or curators, the right they now have by law to appear and except to the proceedings within three (3) years after their disabilities are removed.

(e) In all suits brought under this section and §§ 14-117-423 and 14-117-424, a reasonable attorney's fee shall be taxed in favor of the attorney for the plaintiff, which fee shall be added to the amount of the

cost.

(f) In case the board shall fail to commence suit within sixty (60) days after the taxes become delinquent, the holder of any bond or other evidence of indebtedness issued by the district shall have the right to bring suit for the collection of the delinquent assessments. The proceedings in the suit brought by the bondholder or other creditor shall in all respects be governed by the provisions applicable to suits by the board.

## 14-117-426. Trial procedure — Sale of land to district.

(a) Suits for collection of taxes shall be conducted in the name of the district and in accordance with the practice and proceedings of chancery or circuit courts in this state, except as herein otherwise provided, and neither attorneys ad litem nor guardians ad litem, nor any of the provisions of § 16-65-403 [repealed] shall be required.

(b) The suits may be disposed of on oral testimony, as in ordinary

suits at law.

(c) This law shall be liberally construed to give to this assessment and these tax lists the effect of bona fide mortgage for a valuable consideration, and a first lien upon the lands, as against all persons having an interest therein.

(d) In such suits, it shall be sufficient to allege generally and briefly the organization of the district and the nonpayment of the taxes, setting forth the description of the lands proceeded against, and the amount

chargeable to each tract, with prayer for foreclosure.

(e) However, no informality or irregularity in holding any of the meetings provided for herein, or valuation, assessment of the lands, in the name of the owners, or the number of acres therein shall be a valid defense to the action.

(f) In any case where the lands are offered for sale by the commissioner, as provided by this chapter, and the sum of the tax due, together with interest, cost, and penalty, is not bid for the lands, the commissioner shall:

(1) Bid the lands off in the name of the district, bidding therefor the whole amount due as aforesaid:

(2) Execute his deed therefor, as in other cases under this chapter, conveying the land to the district. The deeds, when duly executed in conformity to the provisions of this chapter and recorded, shall be received as evidence in all cases, showing an indefeasible title in the purchasers, unassailable in either law or equity.

**History.** Acts 1949, No. 329, § 30; A.S.A. 1947, § 21-930.

## 14-117-427. Right of redemption.

At any time within two (2) years after the rendition of the final decree of the chancery or circuit court herein provided for, the owner of the lands may file his petition in the court rendering the decree, alleging the payment of taxes on the lands for the year for which they were sold. Upon the establishment of that fact, the court shall vacate and set aside that decree and provide that any landowner shall have the right to redeem any and all lands sold at that sale within two (2) years thereafter, which shall run from the day when the lands are offered for sale and not from the day the sale is confirmed.

## CHAPTER 118

## IMPROVEMENT DISTRICTS FOR RIVERS

#### SUBCHAPTER.

- 1. General Provisions.
- 2. RED RIVER IMPROVEMENT DISTRICTS.
- 3. Extension of Improvement District Powers.

### SUBCHAPTER 1 — GENERAL PROVISIONS

14-118-103. I 14-118-104. I 14-118-105. I 14-118-106. I 14-118-107. I 14-118-108. A	Construction. Subchapter cumulative. Petition to establish district. Petition — Lands in more than one county. Establishment order — Appeal. Board of commissioners. District use of federal agency plans. Assessment of benefits and damages. Filing of assessment — No-	14-118-111. 14-118-112. 14-118-113.	tice and hearing — Appeal.  Tax levy — Appeal.  Extension of tax upon books — Collection, delinquency, redemption.  Board authority to borrow money and issue bonds.  District rights, powers, and privileges.  Contracts of assurance with federal agencies — Eminent domain.
14-118-109. F	filing of assessment — No-		nent domain.

Cross References. Relocation assistance payments, § 22-9-701 et seq.

Tort liability immunity, § 21-9-301 et seq.

Preambles. The preamble of the Acts of 1949, No. 328, read: "Whereas, The United States under and by virtue of the several Acts of Congress has authorized and may by similar Acts hereafter authorize the Department of the Army and the Chief of Engineers of the United States Army or other Federal agencies to design plans and to execute projects for the improvement of Rivers and their respective Tributaries of this State; and,

"Whereas, the Congress of the United States has adopted a policy in adopting and authorizing such projects that no Federal funds can be expended upon such project until some local State Agency can execute to the United States a Contract of Assurance that the local interest will, (a) furnish without cost to the United States all lands, easements and rights-of-way required for the construction of said projects, (b) to maintain all works after completion, and (c) to indemnify and save harmless the United States from any and all liability for damages growing out of the

construction of said project, and other assurances and agreements; and,

"Whereas, no work can be done on some of the projects which have been adopted and authorized by the Congress of the United States and no projects hereafter adopted and authorized by Congress for the reason that there is no law in this State under which an individual improvement district can conveniently be organized over the large territory required; and,

"Whereas, in many instances now existing and in many instances which will exist in the future, the State and communities in the affected areas to be benefited by said improvement have been deprived and will continue to be deprived of receiving and participating in funds appropriated by Congress to carry into execution such adopted and approved projects, and that it is to the interest of the State that some provision be made for the organization and creation of such improvement districts, with full power and authority to give such assurances to the United States, and with full power and authority to comply with the terms and provisions of said Acts of Congress...."

**Effective Dates.** Acts 1949, No. 328, § 14: Mar. 21, 1949.

### 14-118-101. Construction.

This subchapter shall be liberally construed to effectuate its purpose.

**History.** Acts 1949, No. 328, § 13; A.S.A. 1947, § 21-1013.

## 14-118-102. Subchapter cumulative.

This subchapter shall be cumulative and shall not repeal any existing law, nor shall it be deemed to take from any levee, drainage, or other improvement district any power or right the district now has to enter into and perform any agreement or contract with the United States Army Corps of Engineers or other federal agency.

**History.** Acts 1949, No. 328, § 12; A.S.A. 1947, § 21-1012.

### 14-118-103. Petition to establish district.

(a) When the Congress of the United States has enacted a law adopting and authorizing a project for the improvement of any of the rivers, tributaries, or streams of or bordering on this state, ten (10) or more owners of real property within the area embraced within the adopted and authorized project shall petition the circuit court to establish an improvement district to embrace the property within the area, describing generally the region which is intended to be embraced within the district. A concise statement of the authorized and adopted project, a copy of the Act of Congress, together with the plans and estimated cost to be borne by the district as made by the United States Army Corps of Engineers or other agency of the federal government, shall be attached and made a part of the petition. A concise statement showing the necessity of forming and creating the proposed improvement district, and a concise statement as to the benefits to be received by the proposed adopted and authorized project shall be included.

(b) Upon the filing of the petition, it shall be presented to the judge of the circuit court, either in term or vacation, and the court shall make an order directing the clerk of the circuit court in which the petition is filed to give notice by publication for two (2) weeks in some newspaper or newspapers published and having a general circulation in each of the counties embraced within the proposed boundaries of the district, calling upon all persons owning property therein to appear before the court on some day to be fixed by the court to show cause in favor of or

against the establishment of the district.

(c) At the time named in the notice, the circuit court shall meet and hear all property owners within the proposed district who wish to appear and advocate or resist the establishment of the district. If the

court finds and deems it to be the best interest of the owners of real property within the district that the proposed district shall become an improvement district, under the terms of this subchapter, it shall make an order upon its records establishing the proposed district as an improvement district, subject to all of the terms and provisions of this subchapter.

**History.** Acts 1949, No. 328, § 1; A.S.A. 1947, § 21-1001.

#### **CASE NOTES**

Notice and Hearing.

The requirement of notice by publication under this section does not violate the due process clause of U.S. Const. Amend. 14 where it is not reasonably possible or practical to give a more adequate warning; accordingly, where the number of landowners in a proposed improvement district is likely to be in the thousands, notice by publication instead of by certified mail does not violate due process. Cypress Creek Farms v. L'Anguille Imp. Dist. No. 1, 274 Ark. 518, 626 S.W.2d 357 (1982).

The hearing to establish the improvement district under this section is the only opportunity a landowner has to contest the necessity of the inclusion of his land in the district, and the land included will then be subject to having benefits or damages assessed under § 14-118-108; therefore, substantial property rights of the landowner are involved at the hearing to establish the district, and before such right can be affected, he is entitled to notice and opportunity for hearing appropriate to the nature of the case. Cypress Creek Farms v. L'Anguille Imp. Dist. No. 1, 274 Ark. 518, 626 S.W.2d 357 (1982).

## 14-118-104. Petition — Lands in more than one county.

(a) If lands in more than one (1) county are embraced within the adopted and authorized project and within the proposed district, the petition shall be filed in the circuit court in the judicial district in which the largest portion of the lands are situated and within a county in which some part or portion of lands in the proposed district are situated. All proceedings shall be had in the circuit court.

(b) All improvement districts created under this subchapter shall

receive names selected and designated by the circuit court.

(c) No petition filed under the provisions of this subchapter shall include lands in any other county except the one in which the petition is filed, unless there is attached to the petition a statement signed by twenty (20) landowners or by one-half (½) of the owners in the affected area of each of the counties sought to be included asking that the lands of their county be included.

**History.** Acts 1949, No. 328, § 1; A.S.A. 1947, § 21-1001.

## 14-118-105. Establishment order — Appeal.

(a) The order of the circuit court establishing the district shall have

all of the force and effect of a judgment.

- (b) Any owner of real property within the district may appeal from the judgment within thirty (30) days after the judgment has been made, but if no appeal is taken within that time, the judgment authorizing and creating the district shall be deemed conclusive and binding upon all of the property within the bounds of the district and upon the owners thereof.
- (c) Any owner of property in the district may in a like manner appeal from any order refusing to establish the district.

**History.** Acts 1949, No. 328, § 2; A.S.A. 1947, § 21-1002.

#### CASE NOTES

**Cited:** Cypress Creek Farms v. L'Anguille Imp. Dist. No. 1, 274 Ark. 518, 626 S.W.2d 357 (1982).

### 14-118-106. Board of commissioners.

- (a) When the circuit court has established any improvement district, it shall appoint any number of owners of real property within the district, the number to be fixed by the court, to act as commissioners. At least one (1) shall be appointed from each county containing lands embraced in the district.
- (b) Each of these commissioners shall take the oath of office required by Arkansas Constitution, Article 19, § 20, and shall also swear that he will not directly or indirectly be interested in any contract made by the board, and that he will well and truly assess all benefits resulting from the improvement and all damages caused thereby. Any commissioner failing to take the oath within thirty (30) days after his appointment shall have been deemed to decline, and his place shall be filled by the circuit court, if in session, and if not, by the circuit judge.
- (c) All vacancies of the board shall be filled by the circuit court wherein the district was formed or the judge thereof in vacation.

(d) The board shall select one (1) of their number as chairman, and a majority shall constitute a quorum.

(e) The commissioners provided for shall receive as compensation the sum of five dollars (\$5.00) each day for attending meetings of the board, together with their necessary expenses.

(f) The board of commissioners shall have the right, power, and authority to:

(1) Employ attorneys, agents, and personnel as it deems necessary, and fix their respective compensation; and

(2) Purchase and operate machinery or to contract work required by the federal agency.

**History.** Acts 1949, No. 328, § 3; A.S.A. 1947, § 21-1003.

#### **CASE NOTES**

**Cited:** Kinard v. Cache River Bayou DeView Imp. Dist., 285 Ark. 202, 686 S.W.2d 407 (1985).

## 14-118-107. District use of federal agency plans.

The plans prepared by the Chief of Engineers, United States Army Corps of Engineers, or any other federal agency as and when adopted, approved, and authorized by Congress of the United States, shall be the plan of improvement for the district.

**History.** Acts 1949, No. 328, § 4; A.S.A. 1947, § 21-1004.

## 14-118-108. Assessment of benefits and damages.

(a) The commissioners shall proceed to assess the lands within the district, shall inscribe in a book the description of each tract of land, shall assess the value of the benefits to accrue to each tract by reason of the improvement, and shall enter the assessment of benefits opposite the description.

(b) The assessment shall embrace not merely the lands, but all property and corporate roads, railroads, tramroads, and other improve-

ments on land that will be benefited by the improvement.

(c) There shall be placed opposite each tract of land the name of the supposed owner as shown by the last county assessment, but a mistake in the name shall not vitiate the assessment and the commissioners may correct evident errors which occur in the county assessment list.

(d) The commissioners shall also assess all damages that will accrue to any landowner by reason of the proposed improvement, including all injury to lands taken or damaged. Where they return no such assessment of damages as to any tract of land, it shall be deemed a finding by them that no damage will be sustained.

**History.** Acts 1949, No. 328, § 5; A.S.A. 1947, § 21-1005.

#### CASE NOTES

Notice and Hearing.

The hearing to establish the improvement district under § 14-118-103 is the only opportunity a landowner has to contest the necessity of the inclusion of his land in the district, and the land included will then be subject to having benefits or damages assessed under this section;

therefore, substantial property rights of the landowner are involved at the hearing to establish the district, and before such right can be affected, he is entitled to notice and opportunity for hearing appropriate to the nature of the case. Cypress Creek Farms v. L'Anguille Imp. Dist. No. 1, 274 Ark. 518, 626 S.W.2d 357 (1982).

# 14-118-109. Filing of assessment — Notice and hearing — Appeal.

- (a) When the assessment is completed, the commissioners shall subscribe the assessment and deposit it with the clerk of the circuit court where the district was organized. The book shall be kept and preserved as a public record, and a list of the lands and assessments in the county shall be filed with the respective circuit clerk and recorder in each of the counties.
- (b) Upon the filing of the assessment the circuit clerk shall give notice of the fact by publication for two (2) weeks in some newspaper in each of the counties in which the lands of the district may be situated.
- (c) The notice shall give a description of the lands assessed for the proposed improvement, and it shall indicate that the owners of the lands, if they desire, may appear before the circuit court on a day therein named and fixed by the clerk and present complaints against the assessment of any lands in the district.
- (d) Any owner of real property within the district who conceives himself to be aggrieved by the assessment of benefits or damages, or deems that the assessment of any lands in the district is inadequate, shall present his complaint to the circuit court on the day named in the notice.
- (e) The court shall consider the complaint and enter its findings thereon, either confirming the assessment or increasing or diminishing it, and its findings shall have the force and effect of a judgment, from which an appeal may be taken to the Supreme Court of Arkansas within thirty (30) days, either by the property owner or by the commissioners of the district.

**History.** Acts 1949, No. 328, § 6; A.S.A. 1947, § 21-1006.

## 14-118-110. Tax levy — Appeal.

(a) The circuit court shall at the same time that the assessment of benefits is confirmed, or any subsequent time when called upon by the commissioners of the district, enter upon its records an order which shall have all the force of a judgment, providing that there shall be assessed upon the real property of the district a tax sufficient to pay the estimated cost of acquiring lands, easements, and rights-of-way and other costs required by the construction of the project by the United States, and the estimated cost to maintain the works after completion, with ten percent (10%) added for unforeseen contingencies.

(b) The tax shall be paid by the owners of the real property in the district in proportion to the amount of the assessment of benefits thereon. It is to be paid in annual installments not to exceed twenty-five

percent (25%) for any one (1) year, as provided in the order.

(c) The tax so levied shall be a lien upon all real property in the district from the time the tax is levied by the court and shall be entitled to preference over all demands, executions, encumbrances, or liens

whensoever created. It shall continue until the assessment with pen-

alty and cost that may accrue thereon shall have been paid.

(d) The remedy against the assessment of taxes shall be by appeal, and the appeal must be taken within thirty (30) days from the time the assessment has been made by the circuit court, and on appeal the presumption shall be in favor of the legality of the tax.

(e) The assessment of benefits shall bear interest at the rate of six percent (6%) per annum and shall be payable only in installments as

levied.

**History.** Acts 1949, No. 328, § 7; A.S.A. 1947, § 21-1007.

# 14-118-111. Extension of tax upon books — Collection, delinquency, redemption.

(a) The amount of the tax provided for shall be annually extended upon the tax books of each county where any lands are embraced within the district. The tax shall be collected by the collector of each county in the same manner and within the same time as other state and county taxes, and for his services in making the collection the collector shall receive a commission as is provided by law. The tax shall be paid over to the commissioners of the district by the collector at or before the time he is required by law to make settlement with the county treasurer for county taxes.

(b) The collection of taxes or installments of special assessments levied under this subchapter and the foreclosure of delinquent taxes or installments of special assessments, sale of lands to satisfy foreclosure decrees, and the periods of redemption provided shall be as is prescribed in Acts 1909, No. 279, as amended, and §§ 14-121-426 —

14-121-433.

**History.** Acts 1949, No. 328, § 9; A.S.A. 1947, § 21-1009.

**Publisher's Notes.** Acts 1909, No. 279, referred to in this section, is codified as §§ 14-121-101, 14-121-102, 14-121-104, 14-121-105, 14-121-201 — 14-121-205, 14-121-207, 14-121-301, 14-121-304, 14-121-

 $\begin{array}{l} 305,\ 14\text{-}121\text{-}307,\ 14\text{-}121\text{-}310,\ 14\text{-}121\text{-}311,\\ 14\text{-}121\text{-}313,\ 14\text{-}121\text{-}401\ --\ 14\text{-}121\text{-}406,\ 14\text{-}121\text{-}408,\ 14\text{-}121\text{-}411,\ 14\text{-}121\text{-}412,\ 14\text{-}121\text{-}}\\ 422\ --\ 14\text{-}121\text{-}432,\ 14\text{-}121\text{-}440\ --\ 14\text{-}121\text{-}}\\ 442,\ 14\text{-}121\text{-}802\ --\ 14\text{-}121\text{-}805,\ and\ 14\text{-}}\\ 121\text{-}808. \end{array}$ 

## 14-118-112. Board authority to borrow money and issue bonds.

The acquisitions of rights-of-way, payment of damages, construction of bridges, maintenance, or any other payment or contribution required of the local interests by the plan of the district may be hastened by the borrowing of money by the board at a rate of interest not exceeding six percent (6%) per annum. The board may issue its negotiable bonds or its negotiable evidences of debt signed by such officers as the members of the board may, by resolution, designate, and the board may pledge all assessments of benefits for the repayment thereof.

**History.** Acts 1949, No. 328, § 8; A.S.A. 1947, § 21-1008.

## 14-118-113. District rights, powers, and privileges.

(a) Districts organized under this subchapter shall have all the rights, powers, and privileges of drainage districts organized under existing laws and all amendments of those laws, and specifically under Acts 1909. No. 279, as amended.

(b) However, districts organized under this subchapter shall be limited to the purposes of complying with requirements made of the local interests of drainage, levee, or flood control projects approved and authorized by the Congress of the United States and constructed or partially constructed by the United States Army Corps of Engineers or by other federal agencies.

**History.** Acts 1949, No. 328, § 10; A.S.A. 1947, § 21-1010.

Publisher's Notes. For the codification

of Acts 1909, No. 279, see Publisher's Note to § 14-118-111.

# 14-118-114. Contracts of assurance with federal agencies — Eminent domain.

Districts formed under this chapter shall have:

(1) Full power to enter into contracts of assurance with the federal government or any of its agencies and to do and perform all acts required by that agency in furtherance of the plan of improvement as authorized by the Congress of the United States; and

(2) The right of eminent domain as provided by law for other levee or

drainage districts.

**History.** Acts 1949, No. 328, § 11; A.S.A. 1947, § 21-1011.

## SUBCHAPTER 2 — RED RIVER IMPROVEMENT DISTRICTS

SECTION.

14-118-201. Subchapter cumulative.

14-118-202. Red River Commission — Creation, powers, and duties.

14-118-203. Commission members.

14-118-204. Petition for district establishment — Notice and hearing.

SECTION.

14-118-205. Establishment order.

14-118-206. District board of commission-

14-118-207. Relocation assistance.

14-118-208. Additional powers.

Effective Dates. Acts 1973, No. 264, § 12: Mar. 9, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that improvements to the Red River would provide substantial economic benefits to the coun-

ties in this State served by said River, and would also provide benefits to the environment, the economy, and transportation in this State; and that the immediate passage of this Act is necessary to establish procedures for making said improvements

and to cooperate with the appropriate federal agencies in order to obtain the benefits of federal funds required therefor. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its

passage and approval."

Acts 1975 (Extended Sess., 1976), No. 1035, § 3: Jan. 27, 1976. Emergency clause provided: "It is hereby found and determined by the Seventieth General Assembly, meeting in Extended Session, that the standardization of mileage reimbursement for members of the State's Boards and Commissions will alleviate many discrepancies and inequities in existing laws and will allow such members to receive travel reimbursement commensurate with that paid to State employees. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 862, § 3: Apr. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case Ricarte v. State, CR 86-31, a question has arisen over the validity of Act 1035 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage

and approval."

Acts 1997, No. 103, § 8: Feb. 6, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-first General Assembly that various studies being conducted by the federal government regarding the use of the Red River are nearing completion; that further studies and projects on the Red River will require state participation; and that the provisions of this Act will provide the necessary state resources for such projects. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governer [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

## 14-118-201. Subchapter cumulative.

This subchapter shall be cumulative and shall not repeal any existing law, nor shall it be deemed to take from any levee, drainage, or other improvement district any power or right the district now has to enter into and perform any agreement or contract with the United States Army Corps of Engineers or other federal agency.

**History.** Acts 1973, No. 264, § 10; A.S.A. 1947, § 21-1023.

# 14-118-202. Red River Commission — Creation, powers, and duties.

There is created and established the Red River Commission with the following powers, duties, and responsibilities:

- (1) To cooperate with the appropriate state and federal agencies for the study and planning of needed improvements to and along the main stem of the Red River in Little River, Hempstead, Miller, and Lafayette Counties, Arkansas;
- (2) To review, study, and examine any plan by the State of Arkansas or the federal government, or any agency thereof, for the improvement of the main stem of the Red River in Arkansas and to ascertain the nature and purpose of the improvement, the benefits to be expected therefrom, and the necessity, feasibility, and estimated cost thereof;

(3) To determine the local, nonfederal costs necessary for the construction, operation, and maintenance of any Red River improvement project along and upon the main stem thereof;

(4) To delineate the area to be benefited by improvement of the main

stem of the Red River.

**History.** Acts 1973, No. 264, § 1; A.S.A. 1947, § 21-1014.

### 14-118-203. Commission members.

- (a)(1) The commission shall be composed of eight (8) members, appointed by the Governor as follows: Two (2) who are residents and electors of Little River County, two (2) who are residents and electors of Hempstead County, two (2) who are residents and electors of Miller County, and two (2) who are residents and electors of Lafayette County.
- (2) The Governor's appointments shall be by and with the advice and consent of the Senate.
- (b) Before entering upon commission duties, each member of the commission shall take and subscribe and file in the office of the Secretary of State an oath to support the Constitution of the United States and the Constitution of the State of Arkansas and to faithfully perform the duties of the office upon which he is about to enter.
- (c) For each member of the commission, the term of office shall commence on January 15 following the January 14 expiration date, and shall end on January 14 of the seventh year following the year in which the term commenced.
- (d) Any vacancies arising in the membership of the commission for any reason other than expiration of the regular terms for which the members were appointed shall be filled by appointment by the Governor, and to be thereafter effective until the expiration of the regular terms, subject, however, to the confirmation of the Senate when it is next in session.
- (e) Members of the commission shall receive no pay for their services, but whenever the General Assembly shall have appropriated funds to the Arkansas Water Development Fund administered by the Arkansas

Soil and Water Conservation Commission, they may, upon proper application to the Arkansas Soil and Water Conservation Commission, be reimbursed for expenses in accordance with § 25-16-901 et seq.

**History.** Acts 1973, No. 264, §§ 2-5; 1975 (Extended Sess., 1976), No. 1035, § 1; A.S.A. 1947, §§ 6-616, 21-1015 — 21-1018; reen. Acts 1987, No. 862, § 1; 1997, No. 250, § 88.

A.C.R.C. Notes. Part of this section was reenacted by Acts 1987, No. 862, § 1. Acts 1987, No. 834 provided that 1987

legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

Amendments. The 1997 amendment rewrote (e).

# 14-118-204. Petition for district establishment — Notice and hearing.

(a) Whenever the Congress of the United States has enacted a law adopting and authorizing a project for the improvement of the main stem of the Red River in Little River, Hempstead, Miller, or Lafayette Counties in Arkansas, the commission may, after performing their duties as outlined and prescribed by § 14-118-202, petition the circuit court in the judicial district in which the largest portion of the lands to be benefited are situated and within a county in which some part or portion of lands in the proposed district are situated for the establishment of an improvement district to embrace the property within the area to be benefited.

(b) The petition shall contain a general description of the region which it is intended shall be embraced within the district, a concise statement of the authorized and adopted project, a copy of the Act of Congress, together with the plans and estimated cost to be borne by the district as made by the United States Army Corps of Engineers or other agency of the United States Government, a concise statement showing the necessity of forming and creating the proposed improvement district, a concise statement as to the benefits to be received by the proposed adopted and authorized project, and a statement of the amount of local nonfederal costs necessary for the construction, operation, and maintenance of the project, together with a description of the other local participation required by the appropriate federal agency for construction of the improvements.

(c) Upon the filing of the petition, it shall be presented to the judge of the circuit court, either in term or vacation, and the court shall make an order directing the clerk of the circuit court in which the petition is filed to give notice by publication for two (2) weeks in some newspaper or newspapers published and having a general circulation in each of the counties embraced within the proposed boundaries of the district, calling upon all persons owning property therein to appear before the court on some day to be fixed by the court to show cause in favor of or against the establishment of the district.

(d) At the time named in the notice, the circuit court shall meet and hear all property owners within the proposed district who wish to

appear and advocate or resist the establishment of the district. If the court finds and deems it to be in the best interest of the owners of real property within the district that the area shall become an improvement district, under the terms of this subchapter, it shall make an order upon its records establishing the area as an improvement district, subject to all of the terms and provisions of this subchapter.

(e) All proceedings shall be had in the circuit court where the petition is filed, and all improvement districts created under this subchapter shall receive names selected and designated by the circuit court.

(f) No petition filed under the provisions of this subchapter shall include lands in any other county except the one in which the petition is filed, unless there is attached to the petition a statement signed by twenty (20) landowners or by one-half (½) of the owners in the affected area of each of the counties sought to be included asking that the lands of their county be included.

**History.** Acts 1973, No. 264, § 6; A.S.A. 1947, § 21-1019.

### 14-118-205. Establishment order.

(a) The order of the circuit court establishing the district shall have

all of the force and effect of a judgment.

(b) Any owner of real property within the district may appeal from the judgment within thirty (30) days after the judgment has been made, but if no appeal is taken within that time, the judgment authorizing and creating the district shall be deemed conclusive and binding upon all of the property within the bounds of the district and upon the owners thereof. Any owner of property in the district may in a like manner appeal from any order refusing to establish the district.

**History.** Acts 1973, No. 264, § 7; A.S.A. 1947, § 21-1020.

## 14-118-206. District board of commissioners.

- (a) When the circuit court has established the improvement district upon the petition of the commission, it shall proceed for the appointment of a board of commissioners in the same manner as provided by § 14-118-106.
- (b) The board of commissioners shall have all the rights, powers, authorities, and duties required or necessary for the construction, operation, and maintenance of the improvements set forth in the petition for the establishment of the district and as are provided under and by virtue of the provisions of §§ 14-118-106 14-118-114. However, any such board of commissioners shall consist of not less than five (5) members nor more than nine (9) members.
- (c) The term of the initial board members shall be staggered whereas four (4) shall expire one (1) each year for four (4) years, and the remaining members of the board shall have five-year terms.

- (d) Each member shall serve until his successor is appointed and qualified.
- (e) Appointments by the court shall be made upon petition by the commission established under this subchapter.

History, Acts 1973, No. 264, § 8: A.S.A. 1947, § 21-1021.

### 14-118-207. Relocation assistance.

The provisions of §§ 22-9-701 and 22-9-702, which provide for public entities to provide assistance and payments to persons displaced by the acquisition of real property in connection with programs and projects wholly or partially financed by federal funds and to do such other acts and follow such procedures and practices as may be necessary to comply with the provisions of Public Law 91-646, shall be applicable to all projects undertaken under the provisions of this subchapter.

History. Acts 1973, No. 264, § 9; ferred to in this section, is codified as 42 A.S.A. 1947, § 21-1022.

U.S. Code. Public Law 91-646, re-

U.S.C. §§ 4601-4655.

## 14-118-208. Additional powers.

(a) The Red River Commission may receive and use any federal, state or private funds, donations, and grants made available for the development, use and expansion of the Red River.

(b) The commission may share in costs associated with the Red River

Valley Association.

**History.** Acts 1997, No. 103, § 2. A.C.R.C. Notes. Commas should be inserted following "state" and "use" in sub-

section (a). Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

## Subchapter 3 — Extension of Improvement District Powers

SECTION.	SECTION.
14-118-301. Subchapter cumulative.	damages.
14-118-302. Subchapter construction.	14-118-308. Filing of assessment — No-
14-118-303. General rights, powers, and	tice.
duties not limited.	14-118-309. Hearing of complaints
14-118-304. Preconditions for extension of powers.	against assessment — Appeal.
14-118-305. Petition to acquire powers of drainage district — Notice	14-118-310. Assessment order — Lien — Appeal.
— Hearing — Order — Appeal.	14-118-311. Payment of assessment — Interest.
14-118-306. Extension of powers — Purpose.	14-118-312. Board authority to borrow money and issue bonds.
14-118-307. Assessment of benefits and	14-118-313. Units of construction.

## 14-118-301. Subchapter cumulative.

This subchapter shall be cumulative and shall not repeal any existing law, nor shall it be deemed to take away from any levee, drainage, or other improvement district any power or right that district now has to enter into and perform any agreement or contract with the United States Army Corps of Engineers or other federal agency.

**History.** Acts 1983, No. 432, § 10; A.S.A. 1947, § 21-1033.

## 14-118-302. Subchapter construction.

This subchapter shall be liberally construed to effect its purpose.

**History.** Acts 1983, No. 432, § 11; A.S.A. 1947, § 21-1034.

## 14-118-303. General rights, powers, and duties not limited.

(a) The enumeration of the specific powers and duties under this subchapter shall not be deemed to be a limitation under the general rights, powers, and privileges conferred by the existing drainage district laws of the State of Arkansas as provided in this subchapter.

(b) The district proceeding under this subchapter shall have all the powers specified in this subchapter as well as all the powers specified in §§ 14-117-101 — 14-117-106, 14-117-201 — 14-117-209, 14-117-301 — 14-117-309, 14-117-401 — 14-117-427.

**History.** Acts 1983, No. 432, § 9; A.S.A. 1947, § 21-1032.

## 14-118-304. Preconditions for extension of powers.

When an improvement district has been established by order of the circuit court pursuant to the provisions of §§ 14-118-101 — 14-118-114, commissioners for the improvement district have been appointed by order of the circuit court, an assessment of benefits has been made and approved by order of the circuit court in that district, and the project for the improvement of the rivers, tributaries, or streams by the United States with which the improvement district was intended to cooperate has not been completed by the United States and work thereon has ceased, the improvement district may have the additional powers specified in this subchapter by proceeding as provided in this subchapter.

**History.** Acts 1983, No. 432, § 1; A.S.A. 1947, § 21-1024.

# 14-118-305. Petition to acquire powers of drainage district — Notice — Hearing — Order — Appeal.

(a) The board of commissioners of such an improvement district, by resolution adopted by a majority of the members thereof, may determine that the improvement district should have those rights, powers, and privileges of drainage districts organized under the existing laws of this state and all amendments thereof and specifically under §§ 14-120-601 — 14-120-608, 14-121-101 — 14-121-105, 14-121-201 — 14-121-208, 14-121-301 — 14-121-305, 14-121-307 — 14-121-314, 14-121-401 — 14-121-412, 14-121-420 — 14-121-433, 14-121-440 — 14-121-443, 14-121-501 — 14-121-504, 14-121-602 — 14-121-607, 14-121-701 — 14-121-706, 14-121-801 — 14-121-811, 14-121-1001 — 14-121-1009, and 14-123-313, inclusive, and upon the adoption of the resolution may petition the circuit court by order of which the district was created for such powers.

(b) Upon the filing of the petition, the petition shall be presented to the judge of the circuit court, either in term or vacation, and the court shall make an order directing the clerk of the circuit court in which the petition is filed to give notice by publication for two (2) weeks in some newspaper or newspapers published and having a general circulation in each of the counties embraced within the boundaries of the improvement district, calling upon all persons owning property therein to appear before the court on some day to be fixed by the court and to show cause in favor of or against the enlargement of powers of the district.

(c) At the time named in that notice, the circuit court shall meet and hear all property owners within the district who wish to appear and advocate or resist the enlargement of powers of the district. If the court finds and deems it to be in the best interest of the owners of real property within the district that the powers thereof shall be enlarged as herein provided, it shall make an order upon its records granting to the district the powers herein specified.

(d) The order of the circuit court enlarging the powers of the district

shall have all the force and effect of a judgment.

(e) Any owner of real property within the district may appeal from the judgment within thirty (30) days after the judgment has been made, but if no appeal is taken within that time, the judgment authorizing the enlargement of the powers of the district shall be deemed conclusive and binding upon all of the property within the bounds of the district and upon the owners thereof. Any owner of property in the district or the board of commissioners may within a like manner appeal from an order refusing to enlarge the powers thereof.

**History.** Acts 1983, No. 432, § 2; A.S.A. 1947, § 21-1025.

#### CASE NOTES

Appeals.

Where protesting landowners failed to appeal the trial court's initial order granting an extension of a river improvement district's powers to that of a drainage district, they could not, in a later appeal from the trial court's subsequent order approving an alteration of the drainage district's plans, raise the issue that the

original plans did not comport with the requirement in § 14-118-306 that the purpose of allowing a river improvement district to expand its powers is to complete projects contemplated by an act of Congress and the United States Army Corps of Engineers. Kinard v. Cache River Bayou DeView Imp. Dist., 285 Ark. 202, 686 S.W.2d 407 (1985).

## 14-118-306. Extension of powers — Purpose.

(a) By the order of the circuit court, the powers of the improvement district shall be enlarged and extended to embrace all the powers, rights, and privileges of drainage districts organized under the existing laws of the State of Arkansas and all amendments to the existing laws

and, specifically, under Acts of 1909, No. 279, as amended.

(b) The purpose of this extension of powers shall be to complete the improvements contemplated by the act of Congress and the plans of the United States Army Corps of Engineers, which were filed with and made a part of the petition for the establishment of the improvement district under subchapter 1 of this chapter, which plans constitute the plan of improvement of the district under the provisions of subchapter 1.

History. Acts 1983, No. 432, § 3; A.S.A.

1947, § 21-1026.

**Publisher's Notes.** Acts 1909, No. 279, referred to in this section, is codified as §§ 14-121-101, 14-121-102, 14-121-104, 14-121-105, 14-121-201 — 14-121-205, 14-121-207, 14-121-301, 14-121-304, 1

305, 14-121-307, 14-121-310, 14-121-311, 14-121-313, 14-121-401 — 14-121-406, 14-121-408, 14-121-411, 14-121-412, 14-121-422 — 14-12-432, 14-121-440 — 14-121-442, 14-121-802 — 14-121-805, and 14-121-808.

#### **CASE NOTES**

Appeals.

Where protesting landowners failed to appeal the trial court's initial order granting an extension of a river improvement district's powers to that of a drainage district, they could not, in a later appeal from the trial court's subsequent order approving an alteration of the drainage district's plans, raise the issue that the

original plans did not comport with the requirement in this section that the purpose of allowing a river improvement district to expand its powers is to complete projects contemplated by an act of Congress and the United States Army Corps of Engineers. Kinard v. Cache River Bayou DeView Imp. Dist., 285 Ark. 202, 686 S.W.2d 407 (1985).

## 14-118-307. Assessment of benefits and damages.

(a)(1) Upon the order granting the enlarged powers, the commissioners of the improvement district may determine to proceed to assess the lands in the district for the purpose of carrying out the plans of improvement as adopted in the order creating the district.

(2) Thereupon, the commissioners shall:

- (A) Proceed to assess the lands within the district;
- (B) Inscribe in a book the description of each tract of land;
- (C) Assess the value of the benefits to accrue to each tract by reason of the improvement; and

(D) Enter the assessment of benefits opposite the description.

- (3) The assessment shall embrace not merely the lands but all property and corporate roads, railroads, tramroads, and other improvements on land that will be benefited by the improvement. There shall be placed opposite each tract of land the name of the supposed owner as shown by the last county assessment, but a mistake in the name shall not vitiate the assessment. The commissioners may correct any evident error which occurs in the county assessment list.
- (b) The commissioners shall also assess all damages that will accrue to any landowner by reason of the proposed improvement, including all injury to lands taken or damaged. Where they return no such assessment of damages as to any tract of land, it shall be deemed a finding by them that no damage will be sustained.

**History.** Acts 1983, No. 432, § 4; A.S.A. 1947, § 21-1027.

## 14-118-308. Filing of assessment — Notice.

- (a) When the assessment is completed, the commissioners shall subscribe the assessment and deposit it with the clerk at the circuit court where the district was organized. The book shall be kept and preserved as a public record, and a list of the lands and assessments in the county shall be filed with the respective circuit clerk and recorder in each of the counties.
- (b) Upon the filing of the assessment, the circuit clerk shall give notice of the fact by publication two (2) weeks in some newspaper in each of the counties in which the lands of the district may be situated. The notice shall give a description of the lands assessed for the proposed improvement. The owners of the lands, if they desire, may appear before the circuit court on a day therein named and fixed by the clerk and present complaints, if they have any, against the assessment of any lands in the district.

**History.** Acts 1983, No. 432, § 5; A.S.A. 1947, § 21-1028.

#### **CASE NOTES**

**Cited:** Kinard v. Cache River Bayou DeView Imp. Dist., 285 Ark. 202, 686 S.W.2d 407 (1985).

# 14-118-309. Hearing of complaints against assessment — Appeal.

- (a) Any owner of real property within the district who conceives himself to be aggrieved by the assessment of benefits or damages or deems that the assessment of any lands in the district is inadequate shall present his complaint to the circuit court on the day named in the notice.
- (b) The court shall consider the complaint and enter its findings thereon, either confirming the assessment or increasing or diminishing it.
- (c) The court's findings shall have the force and effect of a judgment, from which an appeal may be taken to the Supreme Court of Arkansas within thirty (30) days, either by the property owner or by the commissioners of the district.

**History.** Acts 1983, No. 432, § 5; A.S.A. 1947, § 21-1028.

## 14-118-310. Assessment order — Lien — Appeal.

(a) The circuit court, at the same time that the assessment of benefits is confirmed or any time when called upon by the commissioners of the district, shall enter upon its records an order which shall have all the force of a judgment, providing that:

(1) There shall be assessed upon the real property of the district a tax sufficient to pay the estimated cost of acquiring lands, easements, and rights-of-way and other costs required by the construction of the project by the United States, the estimated cost to complete the improvements, and the estimated cost to maintain the works after completion, with ten

percent (10%) added for unforeseen contingencies;

(2) The tax shall be paid by the owner of the real property in the district in proportion to the amount of the assessment of benefits thereon and which is to be paid in annual installments, not to exceed twenty-five percent (25%) for any one (1) year, as provided in the order. The tax so levied shall be a lien upon all real property in the district from the time the tax is levied by the court, shall be entitled to preference over all demands, executions, encumbrances, or liens whensoever created, and shall continue until the assessment with penalty and cost that may accrue thereon shall have been paid.

(b) The remedy against the assessment of taxes shall be by appeal, and the appeal must be taken within thirty (30) days from the time the assessment has been made by the circuit court. On appeal, the

presumption shall be in favor of the legality of the tax.

**History.** Acts 1983, No. 432, § 6; A.S.A. 1947, § 21-1029.

## 14-118-311. Payment of assessment — Interest.

The assessment of benefits shall bear interest at the rate of six percent (6%) per annum and shall be payable only in installments as levied.

**History.** Acts 1983, No. 432, § 6; A.S.A. 1947, § 21-1029.

## 14-118-312. Board authority to borrow money and issue bonds.

(a) In order to hasten the work, the board may borrow money at a rate of interest not exceeding the maximum rate prescribed by the Constitution of the State of Arkansas at the time of issuance. The board may issue negotiable bonds therefor signed by the members of the board and may pledge all assessments for the repayment thereof.

(b) It may also issue to contractors to do the work as negotiable evidences of debt, bearing interest not exceeding the lawful rate of interest prescribed by the Constitution of the State of Arkansas.

(c) No bonds issued under the terms of this subchapter shall run for more than thirty (30) years. All issues of bonds shall be divided so that a portion thereof may mature each year as the assessments are collected, or they may all be made payable at the same time, with proper provision for a sinking fund.

**History.** Acts 1983, No. 432, § 7; A.S.A. 1947, § 21-1030.

## 14-118-313. Units of construction.

(a) If, in the preparation of the final work plan, it is determined by the board that the location and character of the works of improvement are so varied that it would be impractical to let contracts on all of them in the same year or if funds would not be available for all of them in the same year, the final work plan may be segregated and divided into one (1) or more units of construction constituting any work or group of works proposed in the final work plan which can be constructed and operated as a feasible unit alone and which can also be operated economically and in conjunction with other proposed works in the plan.

(b) The final work plan shall indicate the area included in each unit of construction and establish each such area as a separate construction area, set forth a percentage or portion of the total project costs allocated to each construction area, and delineate the lands in each construction area which, on the basis of preliminary estimates, would derive some benefits from the works of improvement to be installed therein.

(c) Each construction area shall be appropriately identified by name

and number, such as "Construction Area No. ......"

(d) The determination of the board that the works are approved and proposed in the final work plan, even though divided into units of construction, do not lack unity or singleness of purpose and that the

works in each unit of construction confer some benefit on the lands therein shall be final and conclusive.

- (e) The board of commissioners shall have authority to let contracts for carrying out the works of improvement on a construction area basis and to borrow money and issue notes or bonds and assess benefits and damages on a construction area basis.
- (f) A separate assessment book shall be prepared and maintained for each construction area.
- (g) The tax levied to secure and repay notes or bonds shall be limited to and be a lien only on the lands located within each construction area found to be benefited by the works installed at the construction area, and that fact shall be indicated on the face of the bonds or notes.
- (h) All published notices with respect to the assessment of benefits and damages and the borrowing of money and issuance of notes and bonds shall list the lands according to the construction area in which they are located.

**History.** Acts 1983, No. 432, § 8; A.S.A. 1947, § 21-1031.

### **CHAPTER 119**

## WATER IMPROVEMENT DISTRICT ACCOUNTING

SECTION.	SECTION.
14-119-101. Title.	14-119-108. Fixed asset records.
14-119-102. Bank accounts.	14-119-109. Cash receipts journal.
14-119-103. Deposit of funds.	14-119-110. Cash disbursements journal.
14-119-104. Prenumbered receipts.	14-119-111. Accounting systems above
14-119-105. Prenumbered checks.	minimum.
14-119-106. Petty cash funds.	14-119-112. Classification, maintenance,
14-119-107. Reconciliation of bank ac-	and destruction of records.
counts.	***************************************

Cross References. Applicability of water district accounting law, § 14-89-101.

## 14-119-101. Title.

This chapter shall be known and cited as "The Water Improvement District Accounting Law of 1973."

**History.** Acts 1973, No. 211, § 1; A.S.A. 1947, § 21-2201.

#### 14-119-102. Bank accounts.

- (a) All water improvement districts of this state shall establish and maintain commercial bank accounts for the deposit of all funds received.
- (b) The accounts shall be established and maintained in the name of the water improvement district.

History. Acts 1973, No. 211, § 2; A.S.A. 1947, § 21-2202.

# 14-119-103. Deposit of funds.

All funds received by a water improvement district of this state shall be deposited in total in such bank accounts as prescribed by § 14-119-

History. Acts 1973, No. 211, § 3; A.S.A. 1947, § 21-2203.

# 14-119-104. Prenumbered receipts.

- (a) All items of income are to be formally receipted by the use of prenumbered receipts or mechanical receipting devices such as cash registers or validating equipment. However, the use of prenumbered receipts shall not be required for receipting revenues derived from the sale of water to individual consumers where the income is determined by periodic readings of meters and the individual consumer is billed for such water by means of a water bill, part of which must be returned by the consumer with his remittance.
- (b) In the use of prenumbered receipts, the following minimum standards shall be met:
- (1) Receipts are to be prenumbered by the printer and a printers' certificate obtained and retained for audit purposes. The certificate shall state the date printing was done, the numerical sequence of receipts printed, and the name of the printer;

(2) The prenumbered receipts shall contain the following informa-

tion for each item receipted:

(A) Date:

(B) Amount of receipt;

(C) Name of person or company from whom money was received;

(D) Purpose of payment:

(E) Fund to which receipt is to be credited;

(F) Signature of employee receiving money;

(3) The original receipt should be given to the party making payment. One (1) duplicate copy of the receipt shall be maintained in numerical order in the receipt books and made available to the auditors during the course of annual audit. Additional copies of the receipt are optional with the district's office and may be used for any purposes they deem fit.

(c) The use of mechanical receipting devices, which accomplish the same purpose as prenumbered receipts, is acceptable and is encouraged where such equipment is utilized.

**History.** Acts 1973, No. 211, § 4; A.S.A. 1947, § 21-2204.

#### 14-119-105. Prenumbered checks.

- (a) All disbursements of water improvement district funds, except as noted in § 14-119-106, are to be made by prenumbered checks drawn upon the bank account of that district. Such checks shall be of the form normally provided by commercial banking institutions and shall contain as a minimum the following information:
  - (1) Date of issue;
  - (2) Check number;
  - (3) Payee;
  - (4) Amount both in numerical and written form;
- (5) Signature of authorized disbursing officer of the water improvement district.
- (b) The district shall maintain printers' certificates as to the numerical sequence of checks printed.

**History.** Acts 1973, No. 211, § 5; A.S.A. 1947, § 21-2205.

# 14-119-106. Petty cash funds.

- (a) Water improvement district officers are permitted to establish petty cash funds so long as the funds are maintained on the basis set forth in this section.
- (b) The establishment of a petty cash fund must be approved by the board of directors.
- (c) In establishing such a fund, a check is to be drawn payable to "petty cash."
- (d) That amount may be maintained in the district's office for the handling of small expenditures for items such as postage, light bulbs, delivery fees, etc.
- (e) A paid-out slip is to be prepared for each item of expenditure from that fund and signed by the person receiving the moneys.
  - (f) These paid-out slips shall be maintained with the petty cash.
- (g) When the fund becomes depleted, the district's official may then draw another check payable to "petty cash" in an amount which equals the total paid-out slips issued. At that time, the paid-out slips shall be removed from the petty cash fund and utilized as invoice support for the check replenishing petty cash.

**History.** Acts 1973, No. 211, § 6; A.S.A. 1947, § 21-2206.

#### 14-119-107. Reconciliation of bank accounts.

(a) All water improvement districts maintaining bank accounts, as prescribed in § 14-119-102, shall reconcile their cash receipts and cash disbursements journal to the amount on deposit in banks on a monthly basis. The reconciliations shall take the following form:

"Water Improvement District of ......

Date .....

Amount per Bank Statement Dated ...... \$ .00

ADD: Deposits in transit (Receipts recorded in Cash Receipts Journal not shown on this bank statement.)

DATE RECEIPTS NO. AMOUNT
\$ .00
.00
.00
.00

DEDUCT: Outstanding checks (Checks issued and dated prior to date of bank statement per Cash Disbursements Journal not having yet cleared the bank.)

CHECK NO. PAYEE AMOUNT \$ .00 .00

.00 .00

RECONCILED

**BALANCE:** 

\$ .00

(b) This reconciled balance shall agree to either the cash balance as shown on the official's check stubs running bank balance or the official's general ledger cash balance, whichever system the official employs.

**History.** Acts 1973, No. 211, § 7; A.S.A. 1947, § 21-2207.

## 14-119-108. Fixed asset records.

- (a) All water improvement districts shall establish and maintain, as a minimum, listing of all fixed assets and equipment owned by or under the control of their district. The listing shall contain as a minimum:
  - (1) Property item number, if used by the district;
  - (2) Brief description;
  - (3) Serial number, if available;
  - (4) Location of property;
  - (5) Vendor purchased from and the date of acquisition;
  - (6) Cost of property.
- (b) In lieu of maintaining the list, the district may maintain an index card system for accounting for fixed assets and equipment. The index

card system must contain the above information for each unit of

property owned or under the control of the district.

(c) Such fixed asset and equipment records shall constitute a part of the general records of the office and accordingly shall be made available for utilization by the auditor at the time of audit.

**History.** Acts 1973, No. 211, § 8; A.S.A. 1947, § 21-2208.

# 14-119-109. Cash receipts journal.

(a) All water improvement districts of this state shall establish and maintain as a minimum a cash receipts journal for recording of all moneys received by the district.

(b) The journal shall consist of columnar paper and have sufficient

columns to provide for the recording of:

(1) Date:

- (2) Person moneys received from;
- (3) Prenumbered receipt number;

(4) Total amount received;

(5) Additional columns as deemed necessary by the district for proper classification.

**History.** Acts 1973, No. 211, § 9; A.S.A. 1947, § 21-2209.

# 14-119-110. Cash disbursements journal.

(a) All water improvement districts of this state shall establish and maintain as a minimum a cash disbursements journal for recording and classifying cash disbursements.

(b) The journal shall consist of columnar paper and shall have

sufficient columns to provide for the recording of:

(1) Date;

(2) Payee;

(3) Check number;

(4) Amount check was written for;

(5) Additional columns for the classification of expenditures according to major expense categories such as:

(A) Salaries;

(B) Supplies;

(C) Maintenance;

(D) Etc.

**History.** Acts 1973, No. 211, § 10; A.S.A. 1947, § 21-2210.

## 14-119-111. Accounting systems above minimum.

In the event any water improvement district feels its system of bookkeeping is such that it equals or exceeds the basic system prescribed by this chapter, the district may request a review by the Legislative Joint Auditing Committee. Upon its concurrence with these facts, the Legislative Joint Auditing Committee may issue a certificate to the district stating that the district's accounting system is of a degree of sophistication such that the basic requirements of this chapter are being met and exempting the district from the requirement of the particulars of the system prescribed by this chapter.

History. Acts 1973, No. 211, § 11; A.S.A. 1947, § 21-2211.

# 14-119-112. Classification, maintenance, and destruction of

(a) Accounting records can basically be divided into the two (2) groups: Support documents and permanent records.

(b)(1) Support documents consist primarily of the following items:

(A) Cancelled checks:

(B) Invoices;

(C) Bank statements.

(2) Support documents shall be maintained for a period of at least three (3) years and in no event shall be disposed of prior to being audited for the period in question.

(c) Permanent records consist of journals, ledgers, subsidiary ledgers, minutes, fixed assets, and equipment detail records and shall be

maintained permanently by the district.

(d) When support documents are destroyed, the district shall docu-

ment such destruction by the following procedure:

(1) An affidavit is to be prepared stating which documents are being destroyed and which period of time they apply to, indicating the method of destruction.

(2) This affidavit is to be signed by the district employee performing

such destruction, and one (1) board member.

(e) In addition, the approval of the board for destruction of such documents shall be obtained, and an appropriate note of such approval indicated in the board minutes along with the destruction affidavit. Such board approval shall be obtained prior to the destruction.

History. Acts 1973, No. 211, § 12; A.S.A. 1947, § 21-2212.

## CHAPTER 120

# DRAINAGE AND LEVEE IMPROVEMENT DISTRICTS GENERALLY

#### SUBCHAPTER.

- 1. General Provisions.
- 2. AGREEMENTS WITH UNITED STATES GENERALLY.
- 3. Consolidation of District Duties, Obligations, and Purposes.
- 4. Alternative Procedure for Extension, Collection, and Payment of Assessments and Taxes.
- 5. Judicial Review of Assessment of Benefits.
- 6. CERTAIN BOARDS OF COMMISSIONERS.
- 7. MAINTENANCE OF FACILITIES.

#### RESEARCH REFERENCES

ALR. Liability for diversion of surface water by raising surface level of land. 88 ALR 4th 891.

Am. Jur. 78 Am. Jur. 2d, Waters § 119. Ark. L. Rev. Lex Aquae Arkansas, 27 Ark. L. Rev. 429. **UALR L.J.** Looney, Diffused Surface Water in Arkansas: Is It Time for a New Rule?, 18 UALR L.J. 3.

## Subchapter 1 — General Provisions

#### SECTION.

14-120-101. Date of annual board meeting.

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SECTION.

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**Cross References.** Relocation assistance payments, § 22-9-701 et seq.

Preambles. Acts 1951, No. 83 contained a preamble which read: "Whereas, the United States of America, in the fur-

therance of its policy of flood control of the Mississippi River and its tributaries, has or may hereafter undertake to straighten and clean out bayous that serve as natural drainage of levee districts, provided such levee districts furnish the necessary rights-of-way and otherwise meet the requirements therefor;

Now, therefore...."

Effective Dates. Acts 1927, No. 109, § 6: approved Mar. 4, 1927. Emergency clause provided: "It is hereby ascertained that the statutes by which many of such levee and drainage districts were created are now inadequate to enable them to carry out their purposes, so that there is great danger to lives and property from overflow and great danger to health from stagnant water, so that this act is immediately necessary for the protection of the public health and safety, and it is therefore declared that an emergency exists, and this act shall be in force from and after its passage."

Acts 1929, No. 47, § 5: approved Feb. 25, 1929. Emergency clause provided: "It is found as a matter of fact that many levee and drainage districts in the State have been unable to meet the payment of maturing bonds and interest coupons, and that as a result of such default in the payment of bonds and interest coupons many districts are threatened with the appointment of receivers, by reason of which appointment the said districts will be prevented from performing the functions they were created to perform and will be prevented from maintaining the levees they have already constructed, to the serious impairment of land values in the said districts, and imperiling lives and property within the same; and it is found necessary for the preservation of the public peace, health and safety that this act shall become effective and be in force without delay, and an emergency is therefore declared to exist, and this act shall be in force and effect from and after its passage."

Acts 1929, No. 285, § 3: approved Mar. 29, 1929. Emergency clause provided: "It is found as a fact that many levee and drainage districts in the state have outstanding certificates of indebtedness, notes, and unsatisfied judgments against them and will be unable to pay the certificates of indebtedness or notes when due, and are unable to satisfy the judgments now in force against them, in consequence of which they will have to use all of their income in paying pressing debts, when some of such income is urgently needed to make repairs on the levees and drains, so

that they will not be able to protect the lands of the district from overflow: that there are many such districts where work is now urgently needed, which cannot be done unless the payment of pressing indebtedness can be deferred, so that unless this act goes into immediate operation valuable lands will be overflowed with great peril to human lives by drowning and the diseases that follow an overflow and defective drainage; and it is found necessary for the preservation of the public peace, health and safety that this act shall become effective without delay, and an emergency is declared, and this act shall take effect and be in force on and after its passage."

Acts 1931, No. 240, § 3: approved Mar. 27, 1931. Emergency clause provided: "It is ascertained and hereby declared as a matter of fact that because of the inability of many land owners to pay the taxes of such improvement districts, and large delinguencies in the collections of the revenues thereof, many levee and drainage districts in this State have been, are now and will be unable to meet the payment of maturing bonds and accruing interest thereon now outstanding, and that many such districts are threatened with receivership, and are being prevented from performing the functions for which they were created, and will be prevented from maintaining their improvements already constructed, to the serious impairment and practical destruction of such improvements, and the land value in said districts, and imperiling lives and property within the same, and that the refunding of the indebtedness of such districts is necessary to give relief to the taxpayers thereof, and to rehabilitate such districts; and for these reasons, this act being necessary for the preservation of the public peace, health and safety, an emergency is therefore declared to exist, and this act shall take effect and be in force from and after its passage."

Acts 1935, No. 79, § 5: approved Feb. 26, 1935. Emergency clause provided: "In view of the fact that no adequate market now exists for the bonds and interest coupons of drainage and levee districts of this State, many of which are now in default due to the present economic depression and resultant collapse of land and other values, thus making it impossible for the present owners and holders of

such bonds and interest coupons to realize the value thereof; and the further fact that vast areas of tillable and highly fertile lands within such improvement districts are delinquent, or have been foreclosed upon and acquired by such improvement districts and thus lost to use and taxation, and rendering such districts unable to maintain, repair and preserve such improvements as have been constructed by them for the benefit of the inhabitants and property owners of such districts, and impairing the security of the bondholders of such districts; and the further fact that the legal owners of lands within such districts, due to the presently depressed economic conditions prevailing and long existing in this State and Nation, are about to lose their lands and homes within such districts unless afforded this means of redeeming and/or repurchasing their lands and homes from such improvement districts, and such districts thereby prevented from rehabilitating and preserving such districts, and restoring said lands to commercial uses and taxation, an emergency requiring this act to be placed in immediate operation is declared to exist, and this act being necessary for the due preservation of the public peace, health and safety, shall become operative and be in full force and effect from and after its passage."

Acts 1939, No. 37, § 5: Feb. 6, 1939. Emergency clause provided: "Because of the urgent need for experienced management of Improvement District affairs, this Act is necessary for the immediate preservation of the public peace, health and safety, and an emergency is hereby declared to exist, and this Act shall take effect and be in full force and effect from and after its passage and approval."

Acts 1947, No. 216, § 2: approved Mar. 18, 1947. Emergency clause provided: "Whereas, there are many instances in drainage and levee districts within the State where entire additions in towns and cities which were originally assessed on a lot basis have been reduced to acreage and the land is now being farmed and in other instances land has been platted into lots and new additions formed and said lands still remain on the assessment rolls of the district on an acreage basis. In view of such existing conditions many inequities have arisen and the collection of taxes levied by the districts on said assessments

has been impaired. It is therefore found necessary for the preservation of the public peace, health and safety that this Act shall become effective and be in force without delay and an emergency is hereby declared and this Act shall be in force and effect from and after its passage."

Acts 1951, No. 83, § 6: effective on pas-

sage

Acts 1959, No. 44, § 3: Feb. 13, 1959. Emergency clause provided: "It is hereby ascertained and declared that the passage of this act will eliminate the confusion that presently exists in the time for payment of general and improvement taxes and that its immediate operation is essential to the public peace, health and safety. An emergency is hereby declared, and it shall go into effect immediately upon its

passage and approval."

Acts 1959, No. 62, § 2: Feb. 20, 1959. Emergency clause provided: "It is hereby found and determined by the General Assembly that many levee and drainage districts of this State were created by special acts of the General Assembly; that the date of the regular annual meetings of the board of directors of many such levee and drainage districts was fixed by such special acts; that such dates for holding regular annual meetings are working undue hardship on many such boards of directors and prohibits the efficient administration of the affairs of such districts: and, that only by the immediate passage of this Act may such situation be corrected. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public

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peace, health and safety, shall be in effect from and after its passage and approval."

# 14-120-101. Date of annual board meeting.

The board of directors of any levee or drainage district created by special act of the General Assembly and for which a date for the regular annual meeting of the board of directors is fixed by special act, may change the date of the regular annual meeting by resolution adopted by a majority vote of the membership of the board of directors.

**History.** Acts 1959, No. 62, § 1; A.S.A. 1947, § 21-838.

# 14-120-102. Elections in certain combination levee and drainage districts.

(a) There shall be held an election annually on the first Monday in May in all combination levee and drainage districts where the boundaries of the districts embrace all of the lands within the corporate limits of a city of the first class and no lands situated more than three (3) miles from the corporate limits, for the election of one (1) member of the board of improvement. The judges of the election are to be appointed by the county board of election commissioners.

(b)(1) The improvement district commissioners shall be elected for terms of three (3) years, one (1) commissioner to be elected each year.

(2)(A) The commissioners of the districts as constituted on February 6, 1939, shall hold office according to seniority. The oldest commissioner in point of service shall hold office for three (3) years; the next commissioner in point of service shall hold office for two (2) years; and the last elected or appointed commissioner shall serve for one (1) year, or until their successors are elected and qualified.

(B) All of these terms begin from the first Monday in May, 1939.

(c) If for any cause a vacancy occurs on the board of commissioners, then the remaining two (2) commissioners shall fill the vacancy by the appointment of some person qualified to serve.

**History.** Acts 1939, No. 37, §§ 1-3; A.S.A. 1947, §§ 21-801 — 21-803.

Publisher's Notes. Acts 1939, No. 37, § 4, provided: "That section 1 of Act No. 122 of the Acts of 1911, or so much thereof as in conflict with the provisions of this

act, especially that part of section one, providing for the annual election of all members of Helena Improvement District, is hereby repealed, and the provisions of this act shall apply to said Improvement District."

#### **CASE NOTES**

#### In General.

Emergency clause stating that, because of urgent need for experienced management of improvement district's affairs, this section was necessary, was held to state no fact creating an emergency, and this section was not in effect on the first Monday in May, 1939. Cunningham v.

The question of whether this section 198 Ark. 928, 132 S.W.2d 24 (1939).

Walker, 198 Ark. 928, 132 S.W.2d 24 constitutes a special act was mentioned but not decided. Cunningham v. Walker,

# 14-120-103. Agreements with United States for straightening out, cleaning, and deepening bayous.

(a)(1) The board of directors of any levee district or any levee and drainage district in this state, howsoever created, is authorized and empowered to make and execute any and all required, necessary, and proper contracts and assurances with the United States of America, the Secretary of the Army, the Chief of Engineers of the United States Army, or any other federal agency, to the end that:

(A) The lands, rights-of-way, and easements necessary for straightening out, cleaning out, and deepening bayous that serve as natural drainage for the levee districts may be provided for the work, which work is authorized by the United States of America or any such

federal agency:

(B) To hold and save the United States of America free from damages due to such work; and

(C) To maintain such work, after completion thereof, in accordance

with regulations prescribed by the Secretary of the Army.

- (2) Before the board of directors of any levee district or of any levee and drainage district shall be entitled to exercise any of the powers provided under this section, it shall first ascertain and be declared by resolution of the board of directors, duly entered upon their minutes, a finding that:
  - (A) The benefits of the proposed work are general to the whole district:
  - (B) The benefits of the proposed work are equal to or in excess of the cost to the district.
- (b)(1) Such districts are authorized and empowered to take and hold any lands, interests, or servitudes therein, whether by purchase, grant, donation, or otherwise, that may be declared necessary and proper by the Chief of Engineers of the United States Army for the location. construction, channel rectification, canal, floodway, or diversion contemplated to be constructed or done by the United States of America and thereafter maintained by the district.
- (2) And in order that the rights, easements, and servitudes necessary may be acquired, the board of directors of the district is given authority and power to condemn lands or interest therein for the purposes set out in subdivision (b)(1) of this subsection and to exercise the right of eminent domain. Condemnation proceedings therefor shall be instituted and conducted by such districts in the manner as now provided for condemnation for levee purposes by such districts.

(c) The Governor and Secretary of State of Arkansas are authorized, empowered, and directed to make and execute any and all necessary and proper contracts, easements, deeds, or other instruments in writing giving, granting, and conveying to the board of directors of any such district rights-of-way over, upon, and across any lands owned by the state which are necessary or required to carry out the work contemplated, provided those instruments shall not impair any valid outstanding lien against the lands or any vested private right therein.

(d) This section shall be construed to be cumulative to existing laws relating to levee districts or levee and drainage districts and shall be liberally construed and applied to enable such districts to cooperate with the United States of America or any agency thereof with respect to

the work contemplated.

(e) As used in this section, "board of directors" includes the board of commissioners or other governing body of a district, as the case may be.

**History.** Acts 1951, No. 83, §§ 1-5; A.S.A. 1947, §§ 21-827 — 21-831.

# 14-120-104. Foreclosure sales — Payment with bonds or interest coupons.

(a) Any levee or drainage improvement district in this state having acquired title to any lands within that district by virtue of foreclosure of benefit assessments thereon may sell the lands at prices fixed by the commissioners of the district and may receive in payment of the purchase price for the land the bonds and interest coupons of the district, at face value, to the amount of the purchase price.

(b) Any person redeeming or purchasing lands from the districts, at the time of making payment for those lands in bonds or interest coupons of the district, shall pay to the district in cash an amount necessary to defray all costs and expenses of foreclosure which the district shall have incurred as to the redeemed or purchased tract of

land.

**History.** Acts 1935, No. 79, §§ 2, 3; Pope's Dig., §§ 4589, 4590; A.S.A. 1947, §§ 21-817, 21-818.

Publisher's Notes. This section inso-

far as it relates to repurchases of land acquired by a levee or drainage district by the original owner is superseded by § 14-86-803.

# 14-120-105. Funding and refunding indebtedness evidenced by bonds or certificates.

(a) Any and all levee and drainage improvement districts of this state, whether organized and created under general law or by special act of the General Assembly, shall have power to fund and refund their outstanding indebtedness including bonded indebtedness, certificates of indebtedness, and accrued matured interest on such indebtedness, and to extend the maturity of the indebtedness on such terms as the commissioners or directors of the districts shall deem for the best interest of the districts. To that end the commissioners or directors may issue the negotiable bonds of the districts, with interest coupons

attached; these refunding bonds are to run for a period of not exceeding fifty (50) years from date of issue.

(b) The commissioners or directors of the districts may exchange new bonds for outstanding bonds and certificates of indebtedness, including accrued matured interest coupons, or they may issue and sell new bonds and use the proceeds to take up any of the outstanding bonds or other indebtedness of the districts in the refunding thereof.

(c) These refunding bonds shall not be issued in a greater amount than is necessary to pay the outstanding bonds and certificate of indebtedness and accrued interest coupons then being refunded, with interest to the date such new bonds are delivered plus expenses

incurred in connection with the issuance of the new bonds.

(d) The refunding bonds shall be negotiable instruments and may have coupons evidencing interest payable at annual or semiannual periods and shall have all the rights of security, including liens on assessments of benefits and levy of taxes on the lands, together with all remedies for their collection that are provided for the original bonds issued by the district. The refunding bonds may be further secured by a pledge and mortgage of the assessment of benefits and taxes in the district to be executed by the directors or commissioners.

**History.** Acts 1931, No. 240, §§ 1, 2; Pope's Dig., §§ 11341, 11342; Acts 1981, No. 425, § 26; A.S.A. 1947, §§ 21-819, 21-820.

Cross References. Sale of refunding bonds when old bonds cannot be presented for payment, § 19-9-302.

# 14-120-106. Funding indebtedness other than bonded indebtedness.

(a) Any levee or drainage district in Arkansas, whether created under the general law or by special act of the General Assembly, which has outstanding certificates of indebtedness, notes, warrants, or any unsatisfied judgment against it is authorized and empowered to issue funding bonds for the purpose of paying the certificates of indebtedness,

notes, or unsatisfied judgment against it.

(b) The funding bonds may be issued by the commissioners or directors of any levee or drainage improvement district under the terms and provisions of §§ 14-120-107 and 14-120-108. All proceedings relating to the issuance of any such funding bonds for the purpose of paying outstanding certificates of indebtedness, notes, or for satisfying any judgment of record shall be had in the same manner as provided by §§ 14-120-107 and 14-120-108.

(c)(1) When any outstanding certificate of indebtedness, note, or judgment is paid by the issuance of the funding bonds herein authorized, the certificate of indebtedness or note shall be plainly marked "CANCELLED" and deposited by the secretary of the district with the county clerk if the district embraces only land in the county.

(2) If the district embraces land in more than one (1) county, then the certificate of indebtedness or note shall be deposited with the clerk of

the circuit court for the county or judicial division of the county in which is situated the largest part of the lands in the district.

(d) If an unsatisfied judgment is paid by the issuance of the funding bonds, it shall be the duty of the owner of the judgment to satisfy the judgment within ten (10) days after the payment of the amount due, which satisfaction shall be duly noted on the judgment record in the

manner now provided by law.

(e) The commissioners or directors of any levee or drainage district in this state may issue and sell the funding bonds authorized and use the proceeds to take up outstanding certificates of indebtedness and notes or to pay unsatisfied judgments of the district, or they may exchange new bonds for the outstanding certificates of indebtedness, notes, or in payment of the unsatisfied judgments. All proceedings with reference to the issuance or exchange of such funding bonds shall be had in accordance with the provisions of §§ 14-120-105, 14-120-107, and 14-120-108.

**History.** Acts 1929, No. 285, §§ 1, 2; Pope's Dig., §§ 4582, 4583; A.S.A. 1947, §§ 21-823, 21-824.

**Cross References.** Reorganization or consolidation of districts refunding bonds, § 14-87-101 et seq.

Sale of refunding bonds when old bonds cannot be presented for payment, § 19-9-302.

#### CASE NOTES

**Cited:** Drainage Dist. No. 18 v. McMeen, 183 Ark. 984, 39 S.W.2d 713 (1931).

## 14-120-107. Cancellation of old bonds.

(a) All bonds taken up by any district by funding bonds or proceeds thereof shall be plainly marked "CANCELLED" and deposited by the secretary of the district with the county clerk if the district embraces only land in the county. If the district embraces lands in more than one (1) county, then the bonds shall be deposited with the clerk of the circuit court for the county or judicial division of the county in which is situated the largest part of the lands in the district.

(b) The secretary of the district shall file with the cancelled bonds his certificate showing the number, date, place of payment, and maturity of the cancelled funding bonds including the numbers of the interest coupons, and also the numbers, date, and place of payment of maturity

of the new bonds issued for the funding.

(c) The cancelled bonds shall be carefully kept by the county clerk or circuit court clerk receiving them in his office and the certificate of the secretary of the district shall be recorded in the permanent record book in his office. For his services in filing the bonds and making the record, the clerk shall receive pay on the basis of ten cents (10¢) per line for the record, to be paid by the district.

**History.** Acts 1929, No. 47, § 3; Pope's Dig., § 4586; A.S.A. 1947, § 21-821.

# 14-120-108. Reassessment of benefits generally.

- (a) In any levee or drainage district, if the original assessment of benefits was made by assessors, then the board of directors or commissioners of the district shall have the power to fill any vacancies in the board of assessors.
- (b) If, however, in any such district the power of the board of assessors was exhausted on making the original assessment, the board of commissioners or directors of the district shall have the power to appoint a new board of assessors composed of the same number and with the same qualifications as the original board, the new board to have all powers to make the reassessments provided for in this section as were conferred on the original board of assessors.

**History.** Acts 1929, No. 47, § 4; Pope's Dig., § 4587; A.S.A. 1947, § 21-822.

# 14-120-109. Reassessment of benefits — Particular pieces of property.

(a) A reassessment of benefits may be made in any levee or drainage district in this state, whether created by general or special act, not more often than once a year. The reassessment may be made only as to particular pieces of real property within the district, either by lowering or raising the assessed benefits as justice may require, without the necessity of reassessing all the property in the district. However, where any district shall have issued bonds or incurred indebtedness, the total amount of the assessed benefits for the whole district shall never be reduced on any reassessment.

(b) This reassessment shall be made in the same form, after the same notice, hearing, and right of appeal as provided for the original assessment of benefits in the district and shall have the same time limitation on right of appeal and suits attacking the assessment of benefits in the district as provided for the original assessment of benefits. The installments thereof shall be levied, extended, and collected at the same time, in the same manner, by the same officers, and with the same lien and penalties for delinquencies as were provided for the original assessment.

**History.** Acts 1947, No. 216, § 1; A.S.A. 1947, § 21-826.

#### CASE NOTES

#### In General.

Under former similar statute, any levee or drainage district was authorized to reassess benefits, whether created under general law or by special act, not oftener than once a year. Drainage Dist. No. 18 v. McMeen, 183 Ark. 984, 39 S.W.2d 713 (1931) (decision under prior law).

# 14-120-110. Installment payment of levee and drainage taxes — Exceptions.

(a) All taxes levied on land, railroads, tramroads, pipelines, telephone lines, telegraph lines, and other improvements on real estate situated in any levee or drainage districts in the State of Arkansas shall be deemed to be due and payable at any time from the third Monday in February to and including October 1 in the year succeeding the year in which the levy is made. The taxes shall be payable at the option of the taxpayer in installments as follows:

(1) The first installment of one-fourth (1/4) of the amount of the taxes shall be due and payable on and from the third Monday in February to

and including the third Monday in April;

(2) The second installment of one-fourth (1/4) shall be payable on and from the third Monday in April to and including the third Monday in July; and

(3) The third installment of one-half (1/2) shall be payable on and

from the third Monday in July to and including October 1.

(b) All such taxes remaining unpaid after the periods above specified shall be considered as delinquent. However, this section shall not be applicable to any levee or drainage districts having any outstanding bonded indebtedness, nor shall it be applicable to any levee or drainage district unless and until the commissioners or directors of the districts shall by resolution adopt it.

**History.** Acts 1959, No. 44, § 1; A.S.A. 1947, § 21-837.

# 14-120-111. Printing delinquent lists.

Newspapers which print delinquent lists and notices of sale for levee and drainage districts within this state shall be entitled to receive the fee prescribed by § 26-37-107(c)(1)-(3) for the publication of delinquent real property tax lists.

**History.** Acts 1957, No. 99, § 1; A.S.A. 1947, § 21-832; Acts 1993, No. 623, § 1.

Amendments. The 1993 amendment substituted "the fee prescribed by § 26-

 $37\text{-}108\dots$  property tax lists" for "forty-five cents  $(45\,\text{¢})$  per tract for the first insertion ... thereafter" following "entitled to receive"; and deleted (b).

# 14-120-112. Districts created or organized under special or general law, prior acts — Organization, operation under Acts 1909, No. 279.

(a) Any levee district embracing lands lying wholly within one (1) county, whether created by special act or organized under the general law, and any drainage district created by special act or organized under the provisions of Crawford & Moses' Digest, §§ 3569-3606 [repealed], may become a district duly organized and existing under the provisions of Acts 1909, No. 279, by proceeding in the manner set forth in this section.

(b)(1) The directors or commissioners of the district may petition the county court for an order changing the district to a district operating under Acts 1909, No. 279.

(2) Thereupon the county court shall give notice of the application by two (2) weeks' publication in some newspaper published and having a bona fide circulation in the county and of a time when the petition will be heard.

(c) All owners of real property within the district shall have the right to appear and contest the petition or to support the petition.

(d) The county court shall hear the evidence.

(e)(1) If it appears to the court that a majority in acreage or value of the landowners within the district have petitioned the court to make the change, the court shall either grant the petition or deny the petition, as it deems most advantageous to the property owners of the district. If the court grants the petition, the district shall have all the rights and powers and be subject to all obligations provided by the terms of Acts 1909, No. 279, as amended, and of this section.

(2) However, if a majority of the landowners of the district, or the owners of a majority in value or a majority in acreage of such lands, petition for the change, the county court must make an order declaring that the district shall henceforth be governed by the terms of Acts 1909, No. 279, as amended; and such duty may be enforced by mandamus.

(f)(1) Where districts have been levying their taxes through their boards of directors or commissioners, the boards shall continue to levy

the taxes of the district.

- (2) When they have duly adopted a resolution levying taxes, the secretary of the board shall deliver to the county clerk a list of the lands in the district, with a statement of the taxes levied against each tract, and it shall then be the duty of the county clerk to enter such taxes upon the tax books of the county, to the end that they may be collected along with the state and county taxes.
- (3) In case of any delinquency in the payment of such taxes, they shall be enforced in the method provided by §§ 14-121-426 14-121-432.
- (g)(1) When any districts described in subsection (a) of this section have been collecting their taxes upon an ad valorem plan, based upon the assessment for state and county taxes, it is ascertained and declared that the benefits which will accrue to the lands within their boundaries from the protection of the lands against overflow or their reclamation from surface water, or both, will always be in proportion to their assessment for state and county purposes.
- (2) Where the taxes of the district have in the past been levied by the county court, it shall be the duty of the county court, upon the petition of the commissioners or directors of the district, or of any creditor thereof, to levy upon the lands, upon the ad valorem basis, taxes sufficient to pay the debts of such district and to carry out the plans of improvement made by the commissioners or directors thereof. To that end the commissioners or directors shall file with the county clerk their plans of improvement with an estimate of the cost thereof.

(h)(1) The commissioners or directors of the district shall continue to be commissioners or directors of such districts when operating under this section.

(2) If there are more than three (3) of such commissioners or directors, they shall continue to function with all the powers and responsibilities of commissioners acting under Acts 1909, No. 279, as amended. However, as commissioners or directors die, resign, or become incompetent, their places shall not be filled until the board is reduced to a membership of three (3), after which all vacancies shall be

filled by the county court or by the county judge in vacation.

(i) The purpose of this section is to enable levee districts embracing lands lying wholly within one (1) county, which have been created by special acts or organized under the general law and drainage districts created by special acts or organized under the provisions of the acts which appear as Crawford & Moses' Digest, §§ 3569-3606 [repealed], to become districts duly organized and existing under the provisions of Acts 1909, No. 279, as amended.

History. Acts 1927, No. 109, §§ 1-5. Publisher's Notes. Acts 1909, No. 279, referred to in this section is codified as §§ 14-121-101, 14-121-102, 14-121-104, 14-121-105, 14-121-201 — 14-121-205, 14-121-207, 14-121-301, 14-121-304, 14-121-305, 14-121-307, 14-121-310, 14-121-311,

land — Condemnation.

14-120-218. Conveyance of rights-of-way

 $\begin{array}{c} 14\text{-}121\text{-}313,\, 14\text{-}121\text{-}401 \, - \, 14\text{-}121\text{-}406,\, 14\text{-}121\text{-}408,\, 14\text{-}121\text{-}411,\, 14\text{-}121\text{-}412,\, 14\text{-}121\text{-}}{422 \, - \, 14\text{-}121\text{-}432,\, 14\text{-}121\text{-}440 \, - \, 14\text{-}121\text{-}}{442,\, 14\text{-}121\text{-}802 \, - \, 14\text{-}121\text{-}805,\, and\, 14\text{-}121\text{-}808.} \end{array}$ 

Acts 1927, No. 109, § 5, provided, in part, for the severability of the act.

14-120-231. Trial date - Continuance or

dismissal.

## SUBCHAPTER 2 — AGREEMENTS WITH UNITED STATES GENERALLY

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14-120-234. Execution of deed.

14-120-235. Redemption of property — Vacation of decree.

14-120-236. Tributary tax fund.

14-120-237. Disbursement of funds on vouchers.

14-120-238. Authority to borrow money and issue bonds — Purpose.

SECTION.

14-120-239. Issuance of bonds — Interest coupons.

14-120-240. Lithographing and registration of bonds.

14-120-241. Bonds — Sale prohibitions — Penalty.

14-120-242. Use of revenues for bond payment — Lien.

14-120-243. Nonpayment of bonds — Collection by receiver.

14-120-244. Disposition and use of proceeds from bonds.

**Preambles.** Acts 1937, No. 67 contained a preamble which read: "Whereas, the United States of America, under and by virtue of the several acts of Congress, has authorized, and may hereafter authorize, the Secretary of War and the Chief of Engineers of the United States Army to execute plans and projects for the control of the excess floodwater of the Mississippi River and its tributaries; and

"Whereas, it was desirable that the state, levee and drainage districts, and other political subdivisions thereof, cooperate with the federal government and its agencies in the execution of said plans and projects in order to obtain and receive the benefits to be derived from the construction of said flood control works...."

Acts 1949, No. 249 contained a preamble which read: "(a) To authorize and empower them to make and execute any and all necessary and proper contracts with the United States of America, the Secretary of the Army, the Chief of Engineers of the United States Army, or any other Federal agency, to enable them to comply with obligations and requirements heretofore imposed, or which may be hereafter imposed, on them by the United States of America, by law or under contract, in order that they may obtain and derive benefits which will accrue to such districts as a result of the construction of projects by the Federal Government designed to control the flood waters of the Mississippi River and its tributaries, and.

"(b) To authorize and empower them to acquire by grant, donation, purchase, and right of eminent domain, rights of way, flowage and storage rights for the construction of levees, channel rectification, drainage canals, floodways, flood gates,

pumping plants, reservoirs, spillways and diversions, and spoil disposal areas, and,

"(c) To authorize and empower them to levy such an assessment of benefits on and against the lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines and electric power lines, and all other real property, of whatsoever kind or character, situate within the boundaries of any such district, as the board of assessors thereof may deem reasonable and commensurate with the increase in value or betterment, which annually accrue to such lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines and electric power lines, and all other real property of whatsoever kind or character, situate within the boundaries of any such district, by reason of the construction of flood control works which may be hereafter done by the United States of America within the boundaries of said district, and the perpetual operation and maintenance of such flood control works by the district, and,

"(d) To levy annually a tax not to exceed five per cent [5%] on such increased value, or betterment, which tax shall constitute a lien on the real property on which the assessment of benefits hereinbefore referred to be laid, and provide means for the collection and enforcement of payment thereof, and,

"(e) To borrow such sum of money as may be necessary to enable them to execute and fully perform any and all obligations imposed upon, and assumed by them, under any contracts made in furtherance of the construction of, and the perpetual operation and maintenance of, flood control works which may hereafter be constructed by the United States of

America within the boundaries of such districts; and for such purposes, and to that end, to issue negotiable bonds, and to pledge as security for the prompt and due payment thereof, and the interest to accrue thereon, assessment of benefits and the revenues to be derived by such districts under this Act, in whole or in part, as to the board of directors of any such district may be deemed expedient, and,

"(f) For other purposes.

"(1) Whereas, under resolutions heretofore adopted, or which may be hereafter
adopted, by the Congress of the United
States, the Secretary of Army has been, or
may hereafter be, authorized and directed
to cause to be made preliminary examinations and surveys for flood control and
allied purposes, including channel and
major drainage improvements of the Mississippi River and the tributaries thereof,
and.

"(2) Whereas, certain of said preliminary examinations and surveys so heretofore authorized and directed have been, or may hereafter be completed, and the Chief of Engineers of the United States Army has filed, or may hereafter file, the report required of him thereon; and plans for the construction of projects ancillary to, and in aid of, levee, drainage and other flood control works heretofore done by the United States of America on the Mississippi River and the tributaries thereof, have been, or may hereafter be approved, adopted and authorized to be done by the United States of America, and,

"(3) Whereas, the projects heretofore adopted and authorized, or those which may be hereafter adopted and authorized, provide for the construction of levees along the Mississippi River and the tributaries thereof; the construction of levees, dams, floodways, drainage canals, reservoirs, channel rectifications, and other flood control and drainage works in the particular area lying wholly, or in part, within the boundaries of levee, or drainage, or levee and drainage districts situate in this State, and,

"(4) Whereas, the United States of America will not undertake to construct, nor construct, the flood control and drainage works provided for in the projects heretofore adopted and authorized, or projects which may be hereafter adopted and authorized, unless and until a responsible local agency has given assurances

satisfactory to the Secretary of the Army that it will (a) provide, without cost to the United States of America, all lands, easements and rights of way necessary for the construction of any of such projects, and (b) hold and save the United States of America free from damage due to the construction works, and (c) maintain and operate the works so constructed, after completion in accordance with regulations prescribed by the Secretary of the Army, and.

"(5) Whereas, such flood control and drainage works to be so constructed will lie, either wholly or in part, within the boundaries of a particular levee, or drainage, or levee and drainage district, and, when completed and thereafter perpetually operated and maintained by a district designated in the manner required by the Secretary of the Army, will greatly benefit and increase the value of lands, town lots. blocks, railroads and tramroads, telegraph and telephone lines and electric power lines, and other real property lying within the boundaries of the levee, drainage, or levee and drainage district in which such flood control works are constructed, and,

"(6) Whereas, it is the sense of the General Assembly, and is hereby legislatively declared and determined, that by reason of the benefit and increased value that will accrue to lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines and electric power lines, and other real property, lying within the boundaries of any such levee, or drainage, or levee and drainage district, as the result of the construction of such flood control and drainage works by the United States of America and the perpetual operation and maintenance of such works by such district, it is desirable that such flood control and drainage works be constructed and perpetually operated and maintained, and,

"(7) Whereas, it is further found and legislatively declared and determined that where the construction of such flood control and drainage works will be done within the boundaries of an area located within the boundaries of a presently existing levee district, wherein there presently exists other levee districts and drainage districts of a smaller area, the levee district containing the greater area should be the responsible local agency to cooperate

with the United States of America; and that for such purposes, and in order to accomplish that result, the Board of Directors of such levee, or drainage, or levee and drainage district, should be empowered and authorized to enter into any and all necessary and proper contracts with the United States of America, the Secretary of the Army, the Chief of Engineers of the United States Army, or any other Federal agency, in order to comply with the provisions of all laws and requirements of the United States of America with respect to the Construction and perpetual operation and maintenance of such flood control and drainage works, all to the end that said flood control and drainage works be constructed and thereafter perpetually operated and maintained by such district, as may be required by the Secretary of the Army...."

Effective Dates. Acts 1937, No. 67, § 8: approved Feb. 10, 1937. Emergency clause provided: "It is ascertained and hereby declared that the provisions of this act are necessary to aid the levee or drainage districts, or levee and drainage districts, of this state to obtain and receive the benefits of national flood control legislation to protect the people and properties of this state from floods along the Mississippi River and its tributaries, and this act being necessary for the protection of the public health and safety of the people of this state, an emergency is therefore declared, and this act shall take effect and be in force from and after its passage."

Acts 1949, No. 249, § 26: effective on

passage.

Acts 1959, No. 86, § 2: Feb. 20, 1959. Emergency clause provided: "The General Assembly hereby finds and determines that the laws of this state are not clear as to the method of apportionment of operating costs between projects sponsored by levee and drainage districts which sponsor two or more projects; that because of such uncertainty many levee and drainage districts are unable to properly apportion the cost of operation between the various projects; and, that only by the immediate passage of this Act may said situation be corrected. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 264, § 6: Feb. 13, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the law pertaining to drainage and levee districts should be expanded to authorize the districts within the Red River basin to sponsor construction and maintain, repair, restore, and/or realign levees, revetments, realignments and other associated flood protection improvements and to authorize districts to grant, undertake and carry out assurances of local cooperation and to acquire and make available rights-of-way incident to the prosecution of such works of public improvement which are located outside the boundaries of the districts in order to allow the districts to give assurances to the Corps of Engineers that such improvements will be maintained by the districts; that until such authority is granted, the Corps of Engineers projects located outside a drainage or levee district may be in jeopardy; and that this act should go into effect immediately in order to persuade the Corps of Engineers to continue with revetment projects located outside the boundaries of any levee or drainage district. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

# 14-120-201. Legislative intent.

(a) It is found and declared as a matter of legislative determination that the construction of flood control and drainage works by the United States of America, provided in any project which it has heretofore adopted and authorized or any project which it may hereafter adopt and authorize, and the perpetual operation and maintenance thereof as directed by the Secretary of the Army will be conducive to the public welfare and will result in great betterment and increase in value of lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines and electric power lines, and all other real property situate within the boundaries of the district wherein the flood control and drainage works may be constructed by the United States of America.

(b) For the purpose of this subchapter, the amount of the increased value or betterment to such lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines and electric power lines, and all other real property lying within the boundaries of the district, which is estimated to accrue to the property by reason of the construction of the flood control and drainage works provided for in any such adopted and authorized project, and the costs of perpetual operation and maintenance thereof, shall be ascertained and definitely determined and fixed in the manner provided in §§ 14-120-221 and 14-120-222.

**History.** Acts 1937, No. 67, § 8, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.1.

#### 14-120-202. Definition.

As used in this subchapter, unless the context otherwise requires, "board of directors" shall include the board of commissioners or other governing body of a district, as the case may be.

**History.** Acts 1937, No. 67, § 24, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.17.

## 14-120-203. Construction.

(a) This subchapter shall be liberally construed and applied to enable levee districts, or drainage districts, or levee and drainage districts to cooperate with the United States of America, or any agents or agency thereof, with respect to the making of contracts or agreements, and the performance of the obligations and requirements thereby imposed, relating to the construction of flood control and drainage works within the boundaries of any such district by the United States of America which are designed to control the floodwaters of the Mississippi River and its tributaries.

(b) Districts located within the Red River basin are empowered to cooperate with the United States of America, or any agents or agencies thereof, with respect to the making of contracts or agreements, and the performance of the obligation and requirements thereby imposed, relating to the construction and maintenance of levees, revetments, realignments and other flood protection works located outside the

boundaries of the district.

(c) It is the legislative intent that all provisions of this subchapter shall be liberally and reasonably construed so as to give them full force and effect to the end that the purposes and objectives of this subchapter are fully and expeditiously accomplished.

**History.** Acts 1937, No. 67, § 6; 1937, No. 67, § 25, as added by Acts 1949, No. 249, § 8; Pope's Dig., § 4601; Acts 1949, No. 249, § 6; A.S.A. 1947, §§ 21-809, 21-809.18; Acts 1995, No. 264, § 1.

Amendments. The 1995 amendment deleted the comma following "America" in (a); and inserted present (b), redesignating former (b) as (c).

# 14-120-204. Subchapter cumulative.

This subchapter shall be construed to be cumulative to existing laws, except as to those sections herein expressly amended or repealed. This subchapter shall not repeal Acts 1909, No. 279, and the amendments thereto, nor § 14-121-801, and amendments thereto, but shall be considered an alternative plan to that provided in § 14-121-801.

**History.** Acts 1937, No. 67, § 22, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.15.

**Publisher's Notes.** Acts 1909, No. 279, referred to in this section, is codified as §§ 14-121-101, 14-121-102, 14-121-104, 14-121-105, 14-121-201 — 14-121-205, 14-

 $\begin{array}{c} 121\text{-}207,\ 14\text{-}121\text{-}301,\ 14\text{-}121\text{-}304,\ 14\text{-}121\text{-}}\\ 305,\ 14\text{-}121\text{-}307,\ 14\text{-}121\text{-}310,\ 14\text{-}121\text{-}311,\ 14\text{-}121\text{-}313,\ 14\text{-}121\text{-}401\ -\ 14\text{-}121\text{-}406,\ 14\text{-}}\\ 121\text{-}408,\ 14\text{-}121\text{-}411,\ 14\text{-}121\text{-}412,\ 14\text{-}121\text{-}}\\ 422\ -\ 14\text{-}121\text{-}432,\ 14\text{-}121\text{-}440\ -\ 14\text{-}121\text{-}}\\ 442,\ 14\text{-}121\text{-}802\ -\ 14\text{-}121\text{-}805,\ and\ 14\text{-}}\\ 121\text{-}808. \end{array}$ 

# 14-120-205. Conditions precedent to conferring powers on districts — In general.

No levee district or drainage district, or levee and drainage district, lying in one (1) or more counties, coming within the provisions of this subchapter shall exercise any of the powers conferred by this subchapter or be subject to any of the obligations and duties thereof until the provisions of §§ 14-120-206 — 14-120-215 have been complied with.

**History.** Acts 1937, No. 67, § 23, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.16.

# 14-120-206. Filing project outline and estimate.

(a) An outline of the project insofar as it affects the district and as adopted by the Congress of the United States must be filed in the office of the district and made available for inspection by any interested parties.

(b) There must also be filed with the outline an estimate prepared by the engineer of the district showing the total approximate cost of the project which the district will be required to pay in the event the district exercises the authority conferred by this subchapter with respect to the project. However, if the district does not have a regularly retained engineer, the district may employ a competent engineer to prepare and file the estimate, and, in that event, the district may pay reasonable compensation to the engineer so employed.

(c) Notice of the filing of the outline and estimate shall be given in each county of the district by publication of a notice for at least one (1) insertion in a newspaper published and having a bona fide circulation

in each of the counties of the district.

**History.** Acts 1937, No. 67, § 23, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.16.

# 14-120-207. Board approval of proposal.

The board of directors of the district shall approve the proposed project insofar as it affects the particular district by a proper resolution to that effect which has been adopted by two-thirds (2/3) of the members of the board of directors of the particular district.

**History.** Acts 1937, No. 67, § 23, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.16.

# 14-120-208. Approval election generally.

An election must be held in each county of the district in the manner provided in this subchapter. A majority of the landowners of the district voting at this election shall approve the project according to the outline which was filed with the district and shall authorize the directors of the district to exercise the powers conferred on the district by this subchapter with respect to the project.

**History.** Acts 1937, No. 67, § 23, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.16.

## 14-120-209. Date of election.

The election shall be held on a date to be fixed by the directors of the district at a regular or special meeting duly called for that purpose. However, the date of the election shall be not less than sixty (60) days nor more than one hundred eighty (180) days next succeeding the date of the first publication of the notice of the filing of the outline of the project with the district as provided in § 14-120-206(c).

**History.** Acts 1937, No. 67, § 23, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.16.

# 14-120-210. Notice of election.

(a) Notice of the election shall be given by the secretary of the district, not less than thirty (30) days prior to the date fixed for the election, by publication of a notice for at least two (2) consecutive weekly insertions in a newspaper published and having a bona fide circulation in each of the counties within the district.

(b) The voting places in each county shall be designated by the board of directors of the district, and there shall be not less than two (2) voting places in each county of the district.

(c) The notice of election shall be in substantially the following form:

#### "NOTICE OF SPECIAL ELECTION

Notice is hereby given that a special election will be held in
County, Arkansas, on the day of
19, for the purpose of determining whether the
Board of Directors of
cooperate with the United States Government in the execution of a
certain project for the construction of levees, drains, floodways, drain-
age canals, reservoirs, channel rectifications, and other flood control
and drainage works within the boundaries of the District according to
the outline of the plan for such project which was filed in the office of the
District on theday of, 19, and whether the
Board of Directors of the District shall be authorized to exercise with
respect to the project the powers conferred on the District under the
provisions of Act No
Arkansas for 1949 which became effective on theday of
, 1949. The voting places in
Arkansas, for the election aforesaid shall be as follows: (Here will be
inserted the various voting places of the county in which the particular
notice is published.)"

(d) The notice shall be dated and signed by the secretary of the district. All persons of legal age owning lands within the boundaries of the particular district on the date of the election shall be entitled to vote

at the election.

(e) Any corporation owning land within the boundaries of the district shall be permitted to vote at the election in the following manner:

(1) The board of directors of the corporation shall adopt a resolution designating some person to vote for it at the election, and the person so designated shall be entitled to cast one (1) vote at the election for the corporation he represents by filing with the judges of the election a certified copy of the resolution; and

(2) The judges shall return the resolution to the board of directors of the district with the ballots from the election as provided in this

subchapter.

(f) No landowner or corporation shall cast more than one (1) vote at any such election.

**History.** Acts 1937, No. 67, § 23, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.16.

# 14-120-211. Election judges and clerks.

At the request of the secretary of the district, the judges and clerks for the election shall be designated by the election commissioners of the respective counties in which the election is held. The election officials shall be in the same number, have the same qualifications, and shall be entitled to the same compensation as provided by law for the conduct of general elections in this state.

**History.** Acts 1937, No. 67, § 23, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.16.

#### 14-120-212. Ballots.

(a) The ballots for the election in the respective counties shall be prepared and distributed to the election officials by, or under the supervision of, the secretary of the district.

(b) The ballot to be used at the election need not be in duplicate and

shall be in substantially the following form:

"FOR APPROVAL OF PLAN AND EXERCISE OF AUTHORITY CONFERRED BY THIS ACT. "AGAINST APPROVAL OF PLAN AND EXERCISE OF AUTHORITY CONFERRED BY THIS ACT."

**History.** Acts 1937, No. 67, § 23, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.16.

# 14-120-213. Voting — Certification of results.

(a) The voting places shall be open between the hours of 8:00 a.m. 6:00 p.m. on the date of the election.

(b) Upon the closing of the voting places, the ballots shall be canvassed and the result of the election certified by the judges and clerks of the election at each voting place as expeditiously as possible.

(c) The certificate of the results of the election shall be signed by the judges and clerks at each voting place and the certificate, together with the original ballots cast at the election, shall be delivered not later than two (2) days after the date of the election by the judges holding the election, or by any one of them designated for that purpose, to the

secretary of the district who shall keep and preserve the original ballots in a safe place for the time and for the purposes hereinafter set forth.

(d) A true copy of the certificate of the results of the election signed by the judges and clerks in each county shall be filed and recorded in

the office of the county clerk of the respective counties.

(e) The ballots may be destroyed under the direction of the board of directors of the district at any time after six (6) months from the date of the election unless otherwise ordered by a court of competent jurisdiction.

**History.** Acts 1937, No. 67, § 23, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.16.

#### 14-120-214. Canvass of results — Judicial review.

- (a) Within twenty (20) days after the certification of the election and when the ballots from each county have been delivered to the secretary of the district as provided in this subchapter, the board of directors of the district shall meet at the office of the district and canvass the results of the election in each county.
- (b) Notice of the meeting shall specify its date and purpose and shall be published for two (2) consecutive weekly insertions in some newspaper published and having a bona fide circulation in each county of the district.
- (c) The meeting shall be open to the public. At that meeting any landowner of the district may challenge in writing the certificate of results of the election from any one (1) or more counties of the district and submit evidence in support thereof.
- (d) The district shall furnish a stenographer who shall take and transcribe all the testimony introduced before the board.
- (e) The board shall keep a true and perfect record of its proceedings at the meeting which shall be filed as a public record in the office of the district.
- (f) A copy of the record, certified by the secretary of the district, shall be competent evidence in all courts of this state.
- (g) After consideration of all challenges, if any, the board of directors shall, by proper resolution duly adopted by the board of directors, declare the result of the election.
- (h) Any landowner aggrieved by the finding of the board as to the results of the election may have such finding reviewed by the chancery court of any county in the district. The appeal shall be perfected in thirty (30) days. The review shall be heard by the court on the evidence introduced before the board of directors at the meeting referred to in this section. No additional or different evidence shall be admissible except on an issue of corrupt purpose or fraudulent action on the part of the board of directors in canvassing and declaring the results of the election. Appeals to the Supreme Court shall be perfected in thirty (30) days.

**History.** Acts 1937, No. 67, § 23, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.16.

# 14-120-215. Majority vote — Payment of expenses.

(a) No powers shall be exercised by the district under the provisions of this subchapter nor shall any obligations be incurred or assumed by the district under the provisions of this subchapter unless, after canvass of the results of the election, the board of directors of the district shall have found and declared in the manner provided in this subchapter that a majority of all of the landowners in the district voting at the election have voted for the approval of the plan and the exercise of the authority conferred by this subchapter.

(b) However, the expenses of the election and the compensation paid as provided in this subchapter for the preparation of the estimate of cost to the district may be paid by the district out of any funds of the district

which may be available for that purpose.

(c) Further, any expenses incurred by the district in connection with the election and the preparation of the engineer's estimate of cost to the district as provided in this subchapter shall be refunded to the district out of the proceeds of any bonds sold by the district pursuant to the provisions of this subchapter.

(d) No more than one (1) election as herein provided shall be held in

any one (1) year.

**History.** Acts 1937, No. 67, § 23, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.16.

# 14-120-216. Contract authority.

The board of directors of any levee district, drainage district, or any levee and drainage district in this state is authorized and empowered to make and execute any and all necessary and proper contracts with the United States Army Corps of Engineers or any other federal agency to the end that:

(1) The district will provide the lands, rights-of-way, and easements necessary by purchase, lease, donation, condemnation, or otherwise for the construction, maintenance, repair, realignment, and/or restoration of the works of improvement of any flood control or drainage project of the Mississippi River and its tributaries which heretofore has been adopted and authorized, or any such project which may be adopted and authorized by the United States of America, and the cost thereof paid by the board of directors of the district;

(2) The district will hold and save the United States of America free from damages due to the construction of any such flood control and

drainage works;

(3) The district will perpetually maintain and operate the flood control and drainage works, after completion thereof, in accordance

with regulations prescribed by the United States Army Corps of Engineers or other federal agency; and

(4) The district will provide any and all additional local assurances required of the district by the United States Army Corps of Engineers or other federal agency.

**History.** Acts 1937, No. 67, § 1; Pope's Dig., § 4596; Acts 1949, No. 249, § 1; A.S.A. 1947, § 21-804; Acts 1995, No. 264, § 2.

Amendments. The 1995 amendment substituted "United States Army Corps of Engineers" for "United States of America, the Secretary of the Army, the Chief of Engineers of the United States Army" in the first paragraph; rewrote (1); substituted "will hold" for "shall hold" in (2); substituted "United States Army Corps of Engineers or other federal agency" for "Secretary of the Army" in (3); and added (4)

#### CASE NOTES

Rights-of-Way.

This section confers authority upon drainage and levee districts to make contracts by which federal government is to construct essential levees to protect drainage projects, but drainage districts are to acquire all necessary rights-of-way for the levees and pay incidental damages arising out of their construction; and district has the right to use its surplus tax collection and revenues for the purchase of rights-of-way for the federal control projects without obtaining authority so to do from the county court. Drainage Dist. No. 18 v. Cornish, 198 Ark. 857, 131 S.W.2d 938 (1939).

# 14-120-217. Board authority to acquire land — Condemnation.

(a) In order to discharge its obligations under any contract or agreement authorized to be made by the provisions of § 14-120-216, the board of directors of any levee district or drainage district, or levee and

drainage district, is authorized and empowered to:

(1) Enter upon, take, and hold any lands, interests, or servitude therein, whether by purchase, grant, donation, devise, or otherwise, that may be declared necessary and proper by the Chief of Engineers of the United States Army for the location, construction, operation, repair, or the maintenance of any levee, channel rectification, drainage canal, floodway, reservoir, spillway, or diversion contemplated to be constructed by the United States of America, and thereafter to be perpetually operated and maintained by that district, as provided in any project heretofore adopted and authorized, or in any project which may be hereafter adopted and authorized; and

(2) Take, hold, and acquire flowage and storage rights and servitudes upon, over, and across any land which may be necessary and incident to the construction, operation, repair, and maintenance of any necessary levee, floodway, channel rectification, reservoir, drainage canal, spill-

way, or diversion.

(b) In order that the rights, easements, and servitudes conferred may be acquired, the board of directors of the district is given authority and power to condemn lands or interest therein for such purposes, and the authority and power to exercise the rights of eminent domain.

(c) Condemnation proceedings therefor shall be instituted and conducted in the manner as is now provided in §§ 18-15-1001 — 18-15-1010. Further damages shall be paid for any easement or flowage right or increased use or servitude on any lands by reason of increasing the amount or depth of water on the lands regardless of whether the lands are protected or unprotected by levees, and these damages shall be in addition to damages set out in §§ 18-15-1001 — 18-15-1010.

(d) Any action for taking or damaging property as provided in this section or in §§ 18-15-1001 — 18-15-1010 shall be commenced within

five (5) years from the time the cause of action accrues.

**History.** Acts 1937, No. 67, § 2; Pope's Dig., § 4597; Acts 1949, No. 249, § 2; A.S.A. 1947, § 21-805.

#### **CASE NOTES**

Damages.

In condemnation cases, the landowner is limited to five items of damage: (1) the fair market value of the land appropriated, (2) damage which the construction of the levee will cause by the obstruction of natural drainage, (3) inconvenience of passing over the levee, ditch, drain, or canal, (4) the value of crop and houses on the right-of-way injured or destroyed, and (5) damages shall be paid for any easement or flowage right or increased use or servitude. Board of Dirs. v. Morledge, 231 Ark. 815, 332 S.W.2d 822 (1960).

The landowner is entitled to all the damages which may reasonably flow from the taking of his property, and the chancery court acts properly in ascertaining the total value of the landowner's prop-

erty before the taking and the total value after the taking, in order to determine the damages. Board of Dirs. v. Morledge, 231 Ark. 815, 332 S.W.2d 822 (1960).

In condemnation cases, the landowner is entitled to recover damages for all property taken or damaged; within such purview is part of the land which will be on one side of the river and part on the other, and the tract which will be practically isolated because of the road when constructed. Board of Dirs. v. Morledge, 231 Ark. 815, 332 S.W.2d 822 (1960).

The landowner is entitled to all elements of damages shown to result from the taking of the land, and floodway damages come within such purview. Board of Dirs. v. Morledge, 231 Ark. 815, 332

S.W.2d 822 (1960).

# 14-120-218. Conveyance of rights-of-way across state lands.

The Governor and Secretary of State are authorized, empowered, and directed to make and execute any and all necessary and proper contracts, easements, deeds, or other instruments, in writing, giving, granting, and conveying to the board of directors of any such district, to the United States of America, the Secretary of the Army, Chief of Engineers of the United States Army, or any other federal agency rights-of-way for levees, levee foundations, channel rectifications, reservoirs, reservoir sites, drainage canals, and easements for flowage, and storage rights over, upon, and across any lands owned by the state which are necessary and required for the construction of levees, channel rectifications, floodways, reservoirs, spillways, and diversions and drainage canals. However, no such conveyance, contract, donation, or grant shall impair any valid outstanding lien against the lands or any vested private right therein.

**History.** Acts 1937, No. 67, § 3; Pope's Dig., § 4598; Acts 1949, No. 249, § 3; A.S.A. 1947, § 21-806.

# 14-120-219. Agreements for construction across highways.

If the construction of the flood control and drainage works contemplated under any project is to be constructed upon, over, and across any highways of this state, the State Highway Commission is authorized, empowered, and directed to make and execute any and all contracts, easements, or other instruments in writing with the board of directors of any such district, the United States, the Secretary of the Army, Chief of Engineers of the United States Army, or any other federal agency for rights-of-way for levees, levee foundations, channel rectifications, reservoirs, reservoir sites, drainage canals, and flowage and storage rights thereon, in conformity with any act of Congress applicable.

**History.** Acts 1937, No. 67, § 4; Pope's Dig., § 4599; Acts 1949, No. 249, § 4; A.S.A. 1947, § 21-807.

# 14-120-220. Eminent domain by the United States.

(a) The State of Arkansas agrees:

(1) That the United States of America, the Secretary of the Army of the United States on behalf of the United States, or any of its agencies thereunto legally authorized, be, and each is, fully authorized, empowered, and enabled within this state to exercise the rights of eminent domain and to obtain and acquire property and property rights, flowage rights, rights-of-way and servitudes or easements, or options therefor, in this state, either by voluntary agreements with the owners thereof or by condemnation proceedings under the laws of the United States in pursuance of authority conferred by law in connection with the construction of the works provided for in any such adopted and authorized project; and

(2) Upon the filing of any such condemnation proceedings, the United States shall have the right to take immediate possession thereof to the extent of the interest sought to be acquired and proceed with the construction of flood control and drainage works thereon, as provided in the authorized and adopted project. However, in the event immediate possession is taken as provided in this section, adequate provision shall have been made for the payment of just compensation to the party or parties entitled thereto, and provided further that such condemnation proceedings shall be diligently prosecuted in order that the compensa-

tion shall be promptly ascertained and paid.

(b) Nothing contained in this section shall be construed in such manner as to relieve any levee district, drainage district, or levee and drainage district from any liability to the owners of the property taken or damaged, whether condemnation proceedings be instituted by the United States, or by such district, and in any taking by the United States or any of its agencies, the district shall be liable to the property owner for any damages compensable under existing Arkansas law, whether or not it is compensable under the laws of the United States.

**History.** Acts 1937, No. 67, § 5; Pope's Dig., § 4600; Acts 1949, No. 249, § 5; A.S.A. 1947, § 21-808.

#### 14-120-221. Board of assessors.

The duly constituted board of assessors of the levee district or drainage district, or levee and drainage district in which the flood control and drainage works may be constructed, which contains within its boundaries lands lying in more than one (1) county and which may hereafter desire to avail itself of the powers and authority and benefits conferred by this subchapter, shall constitute a board of assessors for the purpose of ascertaining, determining, and fixing the increase in value, or betterment, which will annually accrue to the lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines, and electric power lines, and all other real property situated within the boundaries of the district.

**History.** Acts 1937, No. 67, § 9, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.2.

#### 14-120-222. Assessment roll.

(a) The board of assessors, each for the county it represents, shall make, in a book to be provided by the district for that purpose, a separate assessment of the increased value or betterment, which it is estimated will annually accrue to the lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines, and electric power lines, and other real property within the boundaries of the district by reason of the construction of the flood control and drainage works provided for in the adopted and authorized project and the perpetual operation and maintenance thereof.

(b) The assessment roll shall be made by the assessors of the real

property in each county in the following manner:

(1) The lands shall be entered upon the assessment roll in convenient subdivisions, according to the government survey. If the lands may not be definitely described according to the government survey, a metes and bounds description, or any other description by which the lands may be identified, will suffice;

(2) Lots and blocks situated in towns and cities shall be entered upon

the assessment roll according to the legal description thereof;

(3) Railroad rights-of-way, including roadbeds, shall be assessed according to the betterment and increase in value and may be assessed per mile;

(4) Telegraph and telephone lines, electric power lines, and all other real property not here enumerated, shall be assessed on the basis of the

increase in value, or betterment thereto, in a manner the board of

assessors may deem expedient and reasonable;

(5) The value of each separate tract or parcel of property, as estimated prior to the construction of the flood control and drainage works provided for in the adopted and authorized project shall be shown in one (1) column; and the increased value thereof, or betterment thereto, estimated to accrue to it annually by reason of the construction of the flood control and drainage works provided for in the adopted and authorized project, and the perpetual operation and maintenance thereof, shall be shown in another column.

**History.** Acts 1937, No. 67, § 9, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.2.

# 14-120-223. Assessment — Time, certification, and filing.

- (a) The assessors shall make their assessment in their respective counties at the time they may be directed to do so by the board of directors of the levee district, drainage district, or levee and drainage district.
- (b) After each of them shall have completed the assessment for his particular county, he shall certify to it and file it in the office of the board of directors of the district, where it shall be open to public inspection.

**History.** Acts 1937, No. 67, § 10, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.3.

# 14-120-224. Board of assessment and equalization.

(a) When the assessments for each county shall have been filed, the president of the district shall call a meeting of the assessors, to be held at the office of the domicile of the district, to sit as a board of assessment

and equalization.

- (b) Thereupon, the president of the board of directors of the district shall cause a notice of the time and place of the meeting to be published once a week for two (2) consecutive weeks in a newspaper in each county which, or a part of which, is embraced in the levee district, calling on all the land, lot, and other property owners, railroad owners, telegraph, telephone, and electric power line owners, or other property owners who should deem themselves aggrieved by reason of the assessment, to appear, on the day named for the holding of the meeting of the board of assessment and equalization, and present their grievances, to the end that any wrongful or erroneous assessment may be corrected.
- (c) After the notice shall have been given, the board of assessment and equalization shall meet at the office of the board of directors at the domicile of the district on the day mentioned in the notice.

(d) They shall select one (1) of their members as a chairman and another as secretary.

(e) A stenographer shall take and transcribe all testimony intro-

duced before the board.

(f) A true and perfect record of its proceedings shall be made and filed

as a public record in the office of the district.

(g) They shall hear complaints of property owners who deem themselves aggrieved and shall adjust any errors or wrongful assessments complained of.

(h) They shall compare and equalize their assessments and correct

the assessment rolls to conform to the equalization.

(i) Their assessments, as equalized, shall be the assessment of benefits for the purpose of this subchapter, until the next assessment shall be ordered by the board of directors of the district.

(j) In all meetings of the board of assessors for equalizing purposes, a majority thereof shall be sufficient to constitute a quorum for the transaction of business and the equalization of the assessments.

(k) The assessors shall receive for their services compensation as the

board of directors of the district may deem commensurate.

**History.** Acts 1937, No. 67, § 10, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.3.

# 14-120-225. Chancery court review of assessment.

Any person aggrieved by an assessment made or equalized by the board of assessment and equalization may have the assessment reviewed by the chancery court of the county in which the property is situate, or by the chancery court of the county in which the district has its domicile if the property involved lies in more than one (1) county, by proceeding in the manner provided in §§ 14-124-109 — 14-124-113.

**History.** Acts 1937, No. 67, § 11, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.4.

# 14-120-226. Tax levy by board to satisfy certain obligations.

(a) The board of directors of any levee district, drainage district, or levee and drainage district is authorized and empowered, and it is made their duty, to assess and levy annually a tax upon the increased value, or betterment, estimated to accrue, and which will accrue, to lands, town lots, blocks, railroads, and tramroads, telegraph and telephone lines, and electric power lines, and all other real property lying within the boundaries of any such district, by reason of the construction and perpetual maintenance and operation of the flood control and drainage works provided for in any projects heretofore adopted and authorized or any projects which may be hereafter adopted and authorized, for the purpose of enabling the district to comply with the provisions of any contract or agreement that it may make with the United States of

America, the Secretary of the Army, the Chief of Engineers of the United States Army, or any other federal agency under which it may obligate itself:

(1) To provide, without cost to the United States, all lands, easements, and rights-of-way necessary for the construction of any adopted

and authorized project;

(2) To hold and save the United States free from damages due to the

construction of such flood control and drainage works; and

(3) To maintain and operate such flood control and drainage works, after completion, in accordance with regulations prescribed by the Secretary of the Army; and

(4) To perform any and all other requirements which may be imposed on it with respect to the construction of such flood control and drainage works and the perpetual maintenance and operation of those works.

(b) The tax to be so annually levied on the increased value, or betterment, shall not exceed five percent (5%) of the increased value, or betterment, as determined and fixed under the provisions of §§ 14-120-223 and 14-120-224 not to exceed twenty-five cents (25¢) per acre on rural lands.

**History.** Acts 1937, No. 67, § 12, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.5.

# 14-120-227. Alternative method of assessment — Reassessment — Vacancies on board.

(a) Any levee district, drainage district, or levee and drainage district in this state, lying in one (1) or more counties which may hereafter avail itself of the benefits and the power and authority conferred by this subchapter, at its election and in the alternative, may have an assessment of benefits made in the manner provided in the law under which it operates. The tax on such assessment of benefits shall be levied in the manner and by the means provided in the law under which it operates, notwithstanding the provisions of §§ 14-120-221 — 14-120-226, and 14-120-228 — 14-120-235 directing:

(1) The manner and method of making the assessment of benefits estimated to accrue to the lands, town lots, blocks, railroads, and tramroads, telegraph and telephone lines, and electric power lines, and other real property situate within the boundaries of the district;

(2) The levy of the annual tax on the assessment of benefits; and

(3) The method of providing for the collection and enforcement of

payment thereof.

(b) In any levee district, drainage district, or levee and drainage district, which may hereafter adopt the alternative method provided in this section, the amount of interest which will accrue on bonds authorized to be issued by the district shall be included and added to the tax, but the interest to accrue on account of the issuing of those bonds shall not be construed as a part of the cost of construction in determining

whether or not the expenses and cost of making the improvements are or are not equal to or in excess of the benefits assessed.

- (c) The landowners in any district which may adopt the alternative method provided in this section shall have the privilege of paying their assessments of benefits in full within thirty (30) days after the assessment becomes final. But all such assessments shall be made payable in installments, so that not more than twenty-five percent (25%) shall be collectible in any one (1) year against the wishes of the landowner. In the event that any landowner avails himself of this indulgence, the deferred installments of the assessed benefits shall bear interest at the rate of six percent (6%) per annum and shall be payable only in installments as levied.
- (d) The levy of the assessment may be made by way of proportional amounts of the total assessed benefits, and interest need not be calculated until it is necessary to do so to avoid exceeding the total amount of benefits and interest.
- (e) A reassessment of benefits may be made in any district which may adopt the alternative method provided in this section not more often than once a year, and the reassessment shall be made by the commissioners, directors, or assessors, respectively, of the districts as was authorized for the original assessment. The reassessment shall be made in the same form, after the same notice, hearing, and right of appeal as were provided for the original assessment, and with the same time limitation on right of appeal and suits attacking the assessment of benefits as provided for the original assessment of benefits, and installments thereof levied, extended, and collected at the same time, in the same manner, by the same officers, and with the same lien and penalties for delinquencies as were provided for the original assessment.
- (f) If in any such district the original assessment of benefits was made by assessors, the board of directors or commissioners of the district shall have the power to fill any vacancies in the board of assessors, or, if in any such district the power of the board of assessors was exhausted on making the original assessment, the board of commissioners or directors of that district shall have the power to appoint a new board of assessors composed of the same number and with the same qualifications as the original board. The new board shall have all powers to make the reassessments herein provided for as were conferred on the original board of assessors.

**History.** Acts 1937, No. 67, § 13, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.6.

#### 14-120-228. Collectors.

(a) The qualified and acting tax collectors of the levee district, drainage district, or levee and drainage districts which may hereafter avail themselves of the powers, authority, and benefits conferred by this subchapter, are charged with the duty of collecting the annual taxes levied under the provisions of this subchapter.

(b) The collector shall collect the tax herein provided to be levied at the same time and in the same manner as other taxes levied by and for the particular district are collected and shall receive compensation

therefor as the board of directors of the district may provide.

**History.** Acts 1937, No. 67, § 14, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.7.

# 14-120-229. Penalty for delinquency — Enforcement proceedings generally.

(a) If the annual tax levied as provided in this subchapter is not paid within the time fixed by law for payment of other taxes levied by law for the particular district each year:

(1) A penalty of twenty-five percent (25%) shall at once attach for the

delinquency; and

(2) The board of directors of the district shall enforce the collection of the taxes and penalty by a proceeding filed in the chancery court of the

county in which the delinquent property is situated.

(b) The court shall give judgment against the delinquent lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines, electric power lines, and other real property situate within the boundaries of the district for the amount of the delinquent taxes, penalty, and interest at the rate of six percent (6%) thereon from the date of delinquency, and all costs of the proceeding, and may include a reasonable attorney fee.

(c) The judgment so rendered by the court shall provide for the sale of the delinquent lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines, and electric power lines, and other real property situate within the boundaries of the district by a commissioner of the court, after advertisement in the manner and form hereinafter

set out.

(d) It shall not be necessary that the ownership of the lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines, and electric power lines, and other real property, be alleged in the proceedings.

(e) The judgment so rendered shall be enforced wholly against the lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines, and electric power lines, and other real property, and not

against any other property or estate of the owner.

(f) All or any part of the delinquent lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines, electric power lines, and

other real property, and the taxes delinquent thereon for one (1) or more years, may be included in one (1) suit for each county, instituted for the collection of the delinquent taxes, penalty, and interest. The proceeding shall be a proceeding in rem.

**History.** Acts 1937, No. 67, § 14, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.7.

## 14-120-230. Filing complaint — Notice.

(a) The board of directors of the district shall file its complaint, setting out the list of delinquent lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines, electric power lines, and other real property, each being set opposite the name of the supposed owner and followed by the total amount of taxes and penalty due upon

each separate tract thereof.

(b) Thereupon, the clerk of the court shall cause to be published a notice containing the list of lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines, electric power lines, and other real property, with the names of the supposed owners and amounts due, in a weekly newspaper published in the county for four (4) weekly insertions prior to any day of the next term of the chancery court. The notice shall call upon the supposed owners named in the complaint, and all other persons claiming any interest whatever in the lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines, electric power lines, and other real property, to appear and show cause why a decree should not be rendered condemning the lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines, electric power lines, and other real property for sale for the delinquent taxes, interest, penalty, and costs.

(c) The notice may be in the following form:

"Board of Directors, ...... District,

vs. "Certain Lands.

"Any and all persons or corporations having or claiming an interest in any of the following described lands, town lots, blocks, railroads or tramroads, telegraph and telephone lines, and electric power lines are hereby notified that suit is pending in the Chancery Court of .......... County, Arkansas, to enforce the collection of certain levee taxes on the subjoined list of lands, together with the amounts severally due upon each, to wit:"

Then shall follow a descriptive list of said lands, town lots, blocks, railroads or tramroads, telegraph and telephone lines, electric power lines, and other real property and amounts thereon respectively as aforesaid.

(d) The published notice may conclude in the following form:

"All persons and corporations interested in said lands, town lots, blocks, railroads or tramroads, telegraph and telephone lines, electric

power lines, and other real property, are notified that they are required by law to appear and make defense to said suit or the same will be taken for confessed and judgment final will be entered directing the sale of said lands, town lots, blocks, railroads or tramroads, telegraph and telephone lines, electric power lines, and other real property, and for the purpose of collecting said delinquent levee taxes together with the payment of interest, penalty, and costs allowed by law.

"Clerk of the Court."

**History.** Acts 1937, No. 67, § 14, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.7.

### 14-120-231. Trial date — Continuance or dismissal.

(a) The suit shall stand for trial on any day of the first term of court held after the filing of the complaint, provided that four (4) weeks' publication shall have been made as hereinbefore directed before such day of trial unless a continuance is granted for good cause shown, within the discretion of the court.

(b) Continuance may be granted as to part of the delinquent lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines, electric power lines, and other real property, without affecting the disposition finally of other tracts as to which no such continuances are

granted.

(c) After the complaint is filed and before a decree is rendered, any person may have the complaint dismissed as to tracts of land, town lots, blocks, railroads and tramroads, telegraph and telephone lines, electric power lines, and other real property, by paying to the clerk of the court the taxes with interest at six percent (6%) per annum thereon from the date they were due and payable, a penalty of twenty-five percent (25%) of the amount of taxes due upon the tract, and all costs of the proceeding attributable to the tract.

**History.** Acts 1937, No. 67, § 14, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.7.

## 14-120-232. Trial procedure.

(a) The suit shall be conducted in accordance with the practice and procedure of chancery courts in this state, except as provided in this subchapter. However, no affidavit shall be required for the publication of the notice, and neither attorneys nor guardians ad litem, nor any provision of § 16-65-403 [repealed] shall be required, and the suits may be disposed of on oral testimony, as in proceedings at law.

(b) The provisions of this subchapter shall be liberally construed to give the assessment list the effect of a bona fide mortgage for a valuable consideration and to constitute a first lien upon the lands as against all

persons having any claim to, or interest in, the lands.

(c) No informality or irregularity in the levying of the tax or in the description or valuation of the lands shall be held a valid defense to the proceedings.

**History.** Acts 1937, No. 67, § 14, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.7.

## 14-120-233. Decree — Sale of real property by commissioner.

(a) If the taxes, interest, penalty, and costs are not paid before the

day of the taking of the decree, the court shall:

(1) Enter a decree condemning the lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines, electric power lines, and other real property for sale for the payment of the taxes, interest, penalty, and costs and may include a reasonable attorney fee; and

(2) Appoint a commissioner to make such sale for the satisfaction

thereof, upon such notice as the court may direct.

(b) The decree of the court shall direct that:

(1) The sale shall be made to the highest bidder for cash; and

(2) If no person bids the amount of taxes, penalty, interest, and costs, including a reasonable attorney fee, then the board of directors of the district shall be deemed the purchaser thereof and the commissioner shall execute a deed to the district on request.

**History.** Acts 1937, No. 67, § 14, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.7.

### 14-120-234. Execution of deed.

(a) It shall be the duty of the commissioner to execute his deed to the purchaser of each separate tract as in other chancery proceedings.

(b) The effect of the commissioner's deed so executed shall be to convey to the purchaser of the lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines, electric power lines, and other real property the title in fee to the real property against all persons.

**History.** Acts 1937, No. 67, § 14, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.7.

## 14-120-235. Redemption of property — Vacation of decree.

Notwithstanding the provisions of § 14-120-234, the owner of any lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines, electric power lines, and other real property sold in the manner provided in this subchapter may redeem the property within two (2) years after the date of the sale. Furthermore, the owner of the lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines, electric power lines, and other real property, at any time

within three (3) years after the rendition of the final decree, may file his petition in the same court alleging the payment of the taxes on the lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines, electric power lines, and other real property for the years for which they were sold. Upon the establishment of that fact, the court shall vacate and set aside the decree and the deed issued by the commissioner thereunder as to those lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines, electric power lines, and other real property lying within the boundaries of the district.

**History.** Acts 1937, No. 67, § 14, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.7.

## 14-120-236. Tributary tax fund.

(a) The moneys derived from the tax levied under the provisions of this subchapter on the increased value, or betterment, which will accrue to the lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines, electric power lines, and other real property, by reason of the construction of the flood control and drainage works provided for in the adopted and authorized project, shall be designated as the tributary tax fund.

(b) These moneys shall be expended for the purposes of:

(1) Paying the principal and interest indebtedness evidenced by bonds or notes issued by the district as provided in this subchapter; and

(2) Enabling the district to comply with the obligations imposed upon, and assumed by, the board of directors in contracts and agreements it makes with the United States of America, the Secretary of the Army, the Chief of Engineers of the United States Army, or any other federal agency with respect to the construction of the flood control and drainage works as provided for in the adopted and authorized project and the perpetual operation and maintenance thereof under regulations prescribed by the Secretary of the Army; and

(3) Payment of administrative and operating expenses incurred by

the district in the performance of its obligations hereunder.

(c) The board of directors of the district shall apportion all administrative and operating expenses of the district between the tributary tax fund and the other operating funds of the district in such manner and amounts as the board of directors shall deem reasonable and proper, and shall pay that part of the administrative and operating expenses apportioned to the tributary project from tributary tax funds.

**History.** Acts 1937, No. 67, § 20 as added by Acts 1949, No. 249, § 8; 1959, No. 86, § 1; A.S.A. 1947, § 21-809.13.

#### 14-120-237. Disbursement of funds on vouchers.

Disbursement of the funds constituting the tributary compliance fund and the tributary tax fund shall be made on vouchers signed by the president and the secretary of the district.

**History.** Acts 1937, No. 67, § 21, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.14.

# 14-120-238. Authority to borrow money and issue bonds — Purpose.

For the purpose of enabling the board of directors of any levee district, drainage district, or levee and drainage district, lying in one (1) or more counties, to cooperate with the United States of America and fully perform any and all agreements, contracts, or obligations imposed on and assumed by it in the construction of the flood control and drainage works provided for in any adopted and authorized project, and, more especially, to enable the board of directors of the district to acquire, and pay for, lands, rights-of-way, and easements necessary to the construction of flood control and drainage works, to save and hold harmless the United States of America from any damage arising by the construction of flood control and drainage works, and the obligations which will be imposed on it to perpetually operate and maintain the works after the completion of them, as the Secretary of the Army may, by regulation, require, the board of directors of any such levee district or drainage district, or levee and drainage district, is authorized to borrow money, and to that end may issue negotiable bonds or notes of the district.

**History.** Acts 1937, No. 67, § 15, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.8.

## 14-120-239. Issuance of bonds — Interest coupons.

(a) Bonds may be sold and negotiated in any market after due advertisement and may be made callable as the board of directors may direct.

(b) The bonds so issued shall be signed by the president of the board

and countersigned by the secretary.

(c) The bonds shall bear interest at a rate not exceeding an average of three and one-half percent (3½%) per annum, over the period of the life of the bonds, represented by semiannual coupons.

(d) The place of payment and the amount of the several installments

to be paid each year may be fixed by the board.

(e) The interest coupons shall be authenticated by the lithographed signature of the president of the board.

**History.** Acts 1937, No. 67, § 15, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.8.

## 14-120-240. Lithographing and registration of bonds.

(a) The bonds shall be lithographed with such devices for identification and to prevent imitation as the board of directors may think proper.

- (b) The secretary shall register the bonds in a book to be kept for that purpose as the bonds are issued, stating therein the date, letter, number, amount and place of payment, to whom issued and sold, of each bond, and shall take a receipt from the person to whom each of the bonds is delivered.
- (c) The treasurer of the board shall keep a like register and shall show all bonds paid or taken up by the board. The register shall show when and to whom payment was made, and no bond or coupon paid or taken up by the board shall again be issued, but shall be cancelled by the treasurer and punched with an instrument provided for that purpose.

**History.** Acts 1937, No. 67, § 16, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.9.

## 14-120-241. Bonds — Sale prohibitions — Penalty.

(a)(1) It shall be unlawful for the board of directors of any such district, or any officer or member thereof, to sell or dispose of any bonds authorized to be sold under the provisions of this subchapter at any place other than the domicile of the board; to pledge or deposit any bond or coupon issued under the provisions of this subchapter as security for the payment of any borrowed money or any debt or obligation of the board or of any other person, firm, or corporation whatever; to appropriate or to use any money arising from the sale of bonds to any use or purpose whatever other than herein expressly provided for; or to sell or negotiate the bonds at less than par, on the basis of bonds bearing interest at three and one-half percent (3½%) per annum.

(2) The bonds shall be sold at public auction to the highest bidder at the office of the levee district, drainage district, or levee and drainage district after notice of the sale has been published for three (3) consecutive insertions in two (2) or more newspapers having general

circulation in the area affected.

(3) It is unlawful for the board of directors to pay directly or indirectly any brokerage fee or fiscal agent's fee or enter into any private contract with any person, firm, or corporation agreeing to sell bonds to the person, firm, or corporation or agreeing to pay a fee to the person, firm, or corporation in the event that the person, firm, or corporation is not the successful bidder.

(4) Any person violating the provisions of subsection (a) of this section shall be deemed guilty of a misdemeanor and shall be subject to

a fine of not more than five thousand dollars (\$5,000).

(b) No compensation shall be allowed the treasurer of the district, or any other officer or member of the board of directors thereof, either directly or indirectly, for negotiating the sale of the bonds or paying out the proceeds arising from the sale of those bonds.

**History.** Acts 1937, No. 67, §§ 17, 19, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, §§ 21-809.10, 21-809.12.

## 14-120-242. Use of revenues for bond payment — Lien.

(a) To secure the due and prompt payment of both principal and interest of any bonds issued under the provisions of this subchapter, the entire revenues, or a fractional part thereof as the board deems expedient and necessary, arising from annual taxes to be levied on the increased value or betterment to accrue to the lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines, electric power lines, and other real property, are pledged.

(b) The board of directors of the district is required to set aside annually from the first revenue collected a sum sufficient in amount to secure and pay the interest on the bonds and the principal thereof, as the interest and principal may become due. Its duty to do so may be

enforced by mandamus proceedings.

(c) The principal and interest of the bonds shall be secured by a lien on all the lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines, and electric power lines, and all other real property in the district.

(d) The board of directors may pledge all or any part of the assessment of benefits and its revenues as security for the payment of the principal and interest of the bonds.

**History.** Acts 1937, No. 67, § 18, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.11.

## 14-120-243. Nonpayment of bonds — Collection by receiver.

(a) If any bond so issued, or interest coupon thereon, is not paid within six (6) months after its maturity, it shall be the duty of the chancery court of any county within the boundaries of the district, on application of any holder of the bond or interest coupon so overdue, to appoint a receiver to collect the taxes then due and thereafter to become due and which are authorized to be levied under the provisions of this subchapter.

(b) The proceeds of the taxes and collections shall be applied after payment of costs, first, to overdue interest, and then to the payment pro rata of all outstanding bonds issued as provided herein, which are then due and payable. The receiver may be directed by suit to foreclose the lien of the taxes on the lands, town lots, blocks, railroads and tramroads, telegraph and telephone lines, electric power lines, and other real property situate within the boundaries of the district.

- (c) The suits so brought by the receiver shall be conducted in all matters as suits by the board of directors, as herein provided, and with like effect. The decrees and deeds therein shall have the same presumptions in their favor.
- (d) However, the receiver shall be discharged when all such sums have been paid.

**History.** Acts 1937, No. 67, § 18, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.11.

## 14-120-244. Disposition and use of proceeds from bonds.

The proceeds derived from the bonds to be so sold shall be paid to the treasurer of the district and shall be set aside from and not commingled with any other funds of the district, shall be designated tributary compliance funds, and shall be used solely for the purpose of enabling the board of directors of that district to comply with the obligations imposed on and assumed by it in the contracts and agreements made with the United States of America or any other federal agency relating to the construction and perpetual operation and maintenance of the flood control works provided for in the adopted and authorized project.

**History.** Acts 1937, No. 67, § 15, as added by Acts 1949, No. 249, § 8; A.S.A. 1947, § 21-809.8.

## Subchapter 3 — Consolidation of District Duties, Obligations, and Purposes

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14-120-328. Authority to borrow money and issue bonds — Purpose.

14-120-329. Sale of bonds — Interest coupons.

14-120-330. Disposition and use of bond proceeds.

SECTION.

14-120-331. Lithographing and registration of bonds.

14-120-332. No compensation for negotiating sale of bonds.

14-120-333. Use of revenues for bond payment — Lien.

Effective Dates. Acts 1961, No. 20, § 22: approved Feb. 2, 1961. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that some levee districts or drainage districts, or levee and drainage districts, have assumed additional obligations and duties in carrying out the provisions of Act 249 of the Acts of the General Assembly of the State of Arkansas for 1949 and Acts amendatory thereof; that such operation as a separate operation from the project for which said districts were originally created places an undue burden on such districts, causes a duplication of work and increases the cost of construction, operation and maintenance; and that the best interests of said districts would be served by the consolidation of the duties, obligations and purposes of said district; for said reasons this Act is hereby declared necessary for the preservation of the public peace, health and safety of such districts

and its inhabitants. An emergency, therefore, is declared to exist and this Act shall take effect and be in full force from and after its passage."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

## 14-120-301. Legislative determination.

It is found and declared as a matter of legislative determination that:

(1) The construction, operation, and maintenance of those flood control and drainage projects authorized by subchapter 2 of this chapter, as amended, as a separate operation by a levee district or drainage district, or levee and drainage district, from the project for which the district was originally created places an undue burden on the district, causes a duplication of work, and increases the cost of construction, operation, and maintenance; and

(2) The construction, operation, and maintenance of the projects could best be carried out by consolidation of the flood control or drainage project authorized by subchapter 2 of this chapter, and acts amendatory thereof, with the levee or drainage project, or levee and drainage project authorized by subchapter 2 of this chapter, and acts amendatory thereof, with the district was originally expected.

drainage project for which the district was originally created.

**History.** Acts 1961, No. 20, § 1; A.S.A. 1947, § 21-839.

#### 14-120-302. Definition.

As used in this chapter, unless the context otherwise requires, "board of directors" includes the board of commissioners or other governing body of a district, as the case may be.

**History.** Acts 1961, No. 20, § 19; A.S.A. 1947, § 21-857.

#### 14-120-303. Construction.

It is the legislative intent that all provisions of this subchapter shall be liberally and reasonably construed so as to give them full force and effect to the end that the purposes and objectives of this subchapter be fully and expeditiously accomplished.

**History.** Acts 1961, No. 20, § 20; A.S.A. 1947, § 21-858.

## 14-120-304. Subchapter cumulative.

This subchapter shall be construed to be cumulative to existing laws relating to levee districts, drainage districts, or levee and drainage districts and shall not repeal any existing law unless the law is in direct conflict herewith. It is the purpose of this subchapter to permit consolidation by any levee district, drainage district, or levee and drainage district of the duties, obligations and purposes for which the district was originally created with those assumed by it under the provisions of subchapter 2 of this chapter and amendments thereto and not to eliminate the method by which levee districts, drainage districts, or levee and drainage districts, may enter contracts with the United States of America, the Secretary of the Army, the Chief of Engineers of the United States Army, or any other federal agency regarding the construction, operation, and maintenance of flood control and drainage works within the district.

**History.** Acts 1961, No. 20, § 17; A.S.A. 1947, § 21-855.

# 14-120-305. Construction of levees and drainage works declared conducive to public welfare.

(a) It is found and declared as a matter of legislative determination that the construction of levees, levee foundations, channel rectifications, floodways, reservoirs, spillways, diversions, drainage canals, or other flood control or drainage works by any levee district, drainage district, or levee and drainage district, or by the United States of America, and the perpetual operation and maintenance of the work by the district will be conducive to the public welfare and will result in

great betterment and increase in value of lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines and underground cables, pipelines, and all other real property and interests in real property situate within the boundaries of the district wherein the levee and other flood control and drainage works may be constructed by the levee district or drainage district, or levee and drainage district, or by the United States of America and operated and maintained by that district.

(b) For the purpose of this subchapter, the amount of the increased value or betterment to the lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines and underground cables, pipelines, and all other real property and interests in real property, within the boundaries of the district, which are estimated to accrue thereto by reason of the construction of levee and other flood control and drainage works and the perpetual operation and maintenance thereof, shall be ascertained and definitely determined and fixed in the manner provided in §§ 14-120-313 and 14-120-314.

**History.** Acts 1961, No. 20, § 7; A.S.A. 1947, § 21-845.

### 14-120-306. Powers of board of directors.

(a) In order to discharge the obligations for which the district was originally created and those which it assumed under the terms of subchapter 2 of this chapter and acts amendatory thereto, the board of directors of any levee district, or drainage district, or levee and

drainage district is authorized and empowered:

(1) To enter upon, take, and hold any lands, or interests or servitudes therein, whether by purchase, grant, donation, devise, or otherwise that may be deemed necessary and proper for the location, construction, operation, repair, or maintenance of any levee, levee foundation, channel rectification, floodway, reservoir, spillway, diversion, drainage canal, or other flood control or drainage works contemplated to be constructed and thereafter to be perpetually operated and maintained by the district; and

(2) To take, hold, and acquire flowage and storage rights and servitudes upon, over, and across any land which may be necessary and incident to the construction, operation, repair, and maintenance of any necessary levee, levee foundation, channel rectification, floodway, reservoir, spillway, diversion, drainage canal, or other flood control or

drainage works.

(b) In order that the rights, easements, and servitudes conferred may be acquired, the board of directors of the district is given authority and power to condemn lands or interests therein for such purposes and the authority and power to exercise rights of eminent domain. Condemnation proceedings therefor shall be instituted and conducted in the manner as is now provided in §§ 18-15-1001 — 18-15-1010 and

provided further damages shall be paid for any easement or flowage right or increased use or servitude on any lands by reason of increasing the amount or depth of water on those lands regardless of whether the lands are protected or unprotected by levees, and those damages shall be in addition to damages set out in §§ 18-15-1001 — 18-15-1010. Any action for taking of property or damaging property as provided in this subchapter or in §§ 18-15-1001 — 18-15-1010 shall be commenced within five (5) years from the time the cause of action accrues.

**History.** Acts 1961, No. 20, § 3; A.S.A. 1947, § 21-841.

## 14-120-307. Conveyance of rights-of-way across state lands.

The Governor and the Secretary of State are authorized, empowered, and directed to make and execute any and all necessary and proper contracts, easements, deeds, or other instruments in writing, giving, granting, and conveying to the board of directors of that district rights-of-way for levees, levee foundations, channel rectifications, floodways, reservoirs, spillways, diversions, drainage canals, or other flood control or drainage works, and easements for flowage and storage rights over, upon, and across any lands owned by the state which are necessary or required for the construction of levees, levee foundations, channel rectifications, floodways, reservoirs, spillways, diversions, drainage canals, or other flood control or drainage works, provided no such conveyance, contract, donation, or grant shall impair any valid outstanding lien against the lands or any vested private right therein.

**History.** Acts 1961, No. 20, § 4; A.S.A. 1947, § 21-842.

## 14-120-308. Agreements for construction across highways.

If any levee, flood control, or drainage work contemplated to be done by any district coming within the provisions of this subchapter is to be constructed upon, over, and across any highways, or highway rights-of-way of this state, the State Highway Commission is authorized, empowered, and directed to make and execute any and all contracts, easements, or other instruments in writing with the board of directors of that district for rights-of-way for levees, levee foundations, channel rectifications, floodways, reservoirs, spillways, diversions, drainage canals, or other flood control or drainage works and flowage and storage rights thereon.

**History.** Acts 1961, No. 20, § 5; A.S.A. 1947, § 21-843.

## 14-120-309. Eminent domain by the United States.

(a) The State of Arkansas agrees that the United States of America, the Secretary of the Army of the United States on behalf of the United

States, or any of its agencies thereunto legally authorized:

(1) Shall be, and each is, fully authorized, empowered, and enabled within this state to exercise the rights of eminent domain and to obtain and acquire property and property rights, flowage rights, rights-of-way, and servitudes or easements, or options therefor, in this state, either by voluntary agreements with the owners thereof or by condemnation proceedings under the laws of the United States in pursuance of authority conferred by law; and

(2) Upon the filing of any condemnation proceedings, shall have the right to take immediate possession of the property to the extent of the interest sought to be acquired, and proceed with the construction of levees, levee foundations, channel rectifications, floodways, reservoirs, spillways, diversions, drainage canals, or other flood control or drainage works thereon. However, in the event immediate possession is taken as herein provided, adequate provision shall be made for the payment of just compensation to the party or parties entitled thereto. Furthermore, those condemnation proceedings shall be diligently prosecuted in order that compensation shall be promptly ascertained and paid.

(b) Nothing contained in this section shall be construed in such manner as to relieve any levee district, drainage district, or levee and drainage district from any liability to the owners of property taken or damaged, whether condemnation proceedings are instituted by the United States, or by such district. In any taking by the United States, or any of its agencies, the district shall be liable to the property owner for any damages compensable under existing Arkansas law, whether or

not it is compensable under the laws of the United States.

**History.** Acts 1961, No. 20, § 6; A.S.A. 1947, § 21-844.

## 14-120-310. Authority to consolidate.

(a) Any levee district, drainage district, or any levee and drainage district, in this state which has executed or may hereafter execute contracts with the United States of America, the Secretary of the Army, the Chief of Engineers of the United States Army, or any other federal agency may consolidate all duties, obligations, and purposes required to carry out flood control or drainage projects with the duties, obligations, and purposes required of it to carry out the obligations and purposes for which the levee district, drainage district, or levee and drainage district, was originally created, if, by the terms of the contract, the levee district or drainage district, or levee and drainage district, has obligated itself:

(1) To acquire and furnish the lands, rights-of-way, and easements necessary for the construction of any flood control or drainage project by

the United States of America within the bounds of the district;

- (2) To hold and save the United States of America free from damages due to the construction of any such flood control and drainage works; and
- (3) To perpetually maintain and operate the flood control and drainage works after the completion thereof, as provided in subchapter 2 of this chapter, and acts amendatory thereto.

(b) In order to effect the consolidation, the levee district or drainage

district, or levee and drainage district, may:

(1) Combine all acts required to operate the projects separately into one (1) operation, may levy and collect one (1) tax for construction, operation, and maintenance of both projects, and may use the funds arising from the tax so levied for the payment of any obligation incurred in the construction, operation, or maintenance of either project;

(2) Cause an assessment of benefits to be made of the benefits arising from the construction, operation, and maintenance of the project for which the district was originally created and those arising from the flood control and drainage project for which the district assumed the sponsorship under the terms of subchapter 2 of this chapter, and acts amendatory thereto.

**History.** Acts 1961, No. 20, § 2; A.S.A. 1947, § 21-840.

## 14-120-311. Consolidation procedure.

- (a) No levee district, drainage district, or levee and drainage district coming within the provision of this subchapter shall exercise any of their powers conferred by this subchapter or consolidate the construction, operation, and maintenance of the project for which the district was originally created with those of the flood control or drainage project assumed by it under the provision of subchapter 2 of this chapter, and amendments thereto, until:
- (1) The board of directors of the district shall have determined by a proper resolution, adopted by two-thirds (%) of the members of the board of directors of the district, that the consolidation would be to the best interest of the district and the landowners thereof:
- (2) A special meeting of the landowners and bondholders of the district shall have been held at which the question of consolidation shall have been presented and for the purpose of hearing objections to the consolidation.
- (b) Notice of the hearing shall be given by the secretary of the district by publication of a notice for at least two (2) consecutive weekly insertions in a newspaper published and having a bona fide circulation in each county within the district. This notice shall state:
- (1) The time and place at which the board of directors shall meet for the purpose of hearing objections;

(2) That the meeting shall be open to the public; and

(3) That at such meeting any landowner or bondholder of the district may offer objection to the action of the board in adopting the resolution.

(c)(1) At the time and place specified in the notice, the board of directors shall meet at the office of the district for the purpose of hearing the objections.

(2) The district shall furnish a stenographer who shall take and

transcribe all the testimony introduced before the board.

(3) The board shall keep a true and perfect record of its proceedings at the meeting which shall be filed as a public record in the office of the district.

(4) A copy of the record, certified by the secretary of the district, shall

be competent evidence in all courts of this state.

- (5) After consideration of all objections, if any, the board of directors, by proper resolution duly adopted by two-thirds (%) of the members of the board of directors, shall declare its decision regarding consolidation of the district.
- (6) Any landowner or bondholder aggrieved by the decision of the board may have the findings reviewed by the circuit court of the county in which the district has its domicile.

(7) The appeal shall be perfected in thirty (30) days.

- (8) The review shall be heard by the court on the evidence introduced before the board of directors at the meeting aforesaid, and no additional or different evidence shall be admissible.
- (9) Appeals to the Supreme Court from the decision of the circuit court shall be perfected in thirty (30) days.

**History.** Acts 1961, No. 20, § 18; A.S.A. 1947, § 21-856.

# 14-120-312. Consolidation and use of assets — Prior liabilities and obligations.

(a) Any levee district, drainage district, or levee and drainage district, which shall consolidate the duties, obligations, and purposes for which it was originally created with those assumed under the provisions of subchapter 2 of this chapter and acts amendatory thereto, shall consolidate all assets held by it arising from either project and shall also assume all liabilities of the district whether created for purposes for which the district was originally created or those assumed by it under the provisions of subchapter 2 of this chapter and acts amendatory thereto.

(b) The assets may be used by the district for any and all purposes now or hereafter authorized by law, and the liabilities of the district

may be paid with funds arising from any source.

(c) All the provisions, rights, security, pledges, covenants, and limitations contained in the instrument creating the liability shall not be affected by the consolidation but shall apply with the same force and effect as provided in the original creation of the liability.

(d) All bonds or notes heretofore issued by the levee district, drainage district, or levee and drainage district shall not be affected by this consolidation, but they shall bear the same rate of interest as now

provided and shall be due and payable at the time and place provided in the original issue of the bonds or notes.

**History.** Acts 1961, No. 20, § 16; A.S.A. 1947, § 21-854.

#### 14-120-313. Board of assessors.

The duly constituted board of assessors of the levee district, drainage district, or levee and drainage district, which shall have consolidated the duties, obligations, and purposes required of it by the acts under which it was originally created, and acts amendatory thereto, with the duties, obligations, and purposes required of it to carry out the flood control and drainage operations assumed by it under subchapter 2 of this chapter, and amendments thereto, shall constitute a board of assessors for the purpose of ascertaining, determining, and fixing the increase in value or betterment which will annually accrue to the lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines and underground cables, pipelines, and all other real property and interests in real property within the boundaries of the district.

**History.** Acts 1961, No. 20, § 8; A.S.A. 1947, § 21-846.

### 14-120-314. Assessment roll.

(a) The board of assessors shall, each for the county he represents, make in a book, to be provided by the district for that purpose, a separate assessment of the increased value or betterment, which it estimates will annually accrue to the lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines and underground cables, pipelines, and all other real property and interests in real property within the boundaries of the district, by reason of the construction of levees and other flood control and drainage works and the perpetual operation and maintenance of these works.

(b) The assessment roll of the property in each county shall be made

by the assessors in the following manner:

(1) The lands shall be entered upon the assessment roll in convenient subdivisions according to the government survey. If the lands may not be definitely described according to the government survey, a metes and bounds description, or any other description by which the lands may be identified, will suffice:

(2) Lots and blocks situated in towns and cities shall be entered on

the roll according to the legal description thereof;

(3) Suburban lots, rural lots, and industrial tracts shall be entered upon the assessment roll under such description as will properly identify the property involved;

(4) Railroad and tramroad rights-of-way shall be assessed according to the betterment or increase in value and may be assessed per mile;

(5) Telegraph, telephone, and electric power lines and underground cables, pipelines, and all other property, or interests in property not here enumerated, shall be assessed on the basis of the increase in value, or betterment thereto, in a manner the board of assessors may deem

expedient and reasonable;

(6) The value of each separate tract or parcel of property as estimated without the levees and other flood control or drainage works shall be shown in one (1) column; the increased value thereof, or betterment thereto, estimated to accrue to it annually by reason of the construction of levees and other flood control and drainage works and the perpetual operation, and maintenance thereof, shall be shown in another column.

**History.** Acts 1961, No. 20, § 8; A.S.A. 1947, § 21-846.

## 14-120-315. Assessment — Time, certification, and filing.

- (a) The assessors shall make their assessments in their respective counties at such time as they may be directed so to do by the board of directors of the levee district, drainage district, or levee and drainage district.
- (b) After each of them shall have completed the assessment for his particular county, he shall certify to it and file it in the office of the board of directors of the district, where it shall be open to public inspection.

**History.** Acts 1961, No. 20, § 9; A.S.A. 1947, § 21-847.

## 14-120-316. Board of assessment and equalization.

(a) When the assessments for each county shall have been filed, the president of the board of directors of the district shall call a meeting of the assessors, to be held at the office of the domicile of the district, to sit

as a board of assessment and equalization.

(b) The president of the board of directors of the district shall cause a notice of the time and place of the meeting to be published once a week for two (2) consecutive weeks in a newspaper in each county which, or a part of which, is embraced in the levee district, calling on all owners of the lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines and underground cables, pipelines, and all other real property and interests in real property who deem themselves aggrieved by reason of the assessment to appear on the day named for the holding of the meeting of the board of assessment and equalization and present their grievances to the end that any wrongful or erroneous assessment may be corrected.

- (c) After notice has been given, the board of assessment and equalization shall meet at the office of the board of directors at the domicile of the district on the day mentioned in the notice.
- (d) They shall select one (1) of their members as chairman and another as secretary.
- (e) A stenographer shall take and transcribe all testimony introduced before the board; and a true and perfect record of its proceedings shall be made and filed as a public record in the office of the district.

(f) They shall hear complaints of property owners who deem themselves aggrieved and shall adjust any errors or wrongful assessments

complained of.

- (g) They shall compare and equalize their assessments and correct the assessment rolls to conform to this equalization. Their assessments, as equalized, shall be the assessment of benefits for the purpose of this subchapter until the next assessment is made.
- (h) In all meetings of the board of assessors for equalization purposes, a majority shall be sufficient to constitute a quorum for the transaction of business and the equalization of the assessments.
- (i) The assessors shall receive for their services such compensation as the board of directors of the district may deem commensurate.
- (j) The action of the board of directors in ordering an assessment under the terms of this subchapter shall not be deemed to be an abandonment of benefits previously assessed under the provisions of the act creating the district, and acts amendatory thereof, or under subchapter 2 of this chapter and amendments thereto, but the assessments of benefits shall be and remain in full force and effect until the new assessment becomes final. Upon the assessment becoming final, either through action of the board of assessors or on review by a circuit court as provided in this subchapter, the final assessment shall be the assessment of benefits for the district until a new assessment is made.

**History.** Acts 1961, No. 20, § 9; A.S.A. 1947, § 21-847.

## 14-120-317. Chancery court review of assessment.

Any person aggrieved by an assessment made or equalized by the board of assessment and equalization may have that assessment reviewed by the chancery court of the county in which the district has its domicile, by proceeding in the manner provided in §§ 14-124-109—14-124-113.

**History.** Acts 1961, No. 20, § 10; A.S.A. 1947, § 21-848.

## 14-120-318. Annual assessment and levy of tax upon increased value.

For the purpose of enabling any levee district, drainage district, or levee and drainage district to carry out the purposes for which the district was originally created and those assumed by it under the terms of subchapter 2 of this chapter and acts amendatory thereto, the board of directors of the district is authorized and empowered, and it is made their duty, to assess and levy annually a tax upon the increased value or betterment estimated to accrue, and which will accrue, to all lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines, and underground cables, pipelines, and all other real property and interests in real property lying within the boundaries of the district by reasons of the construction, perpetual maintenance, and operation of the levees and other flood control and drainage works, the operation and maintenance of which is the duty of the district, provided the tax to be so annually levied on such increased value or betterment shall not exceed five percent (5%) of the increased value, or betterment, as determined and fixed under the provisions of §§ 14-120-315 and 14-120-316 nor twenty-five cents  $(25\phi)$  per acre on rural lands.

**History.** Acts 1961, No. 20, § 11; A.S.A. 1947, § 21-849.

#### **CASE NOTES**

"Levy" Construed.

Although no Arkansas cases describe "levy," Arkansas cases, statutes, and constitution use the word to mean to impose a

tax under authority of law. Price v. Drainage Dist. No. 17, 302 Ark. 64, 787 S.W.2d 660 (1990).

## 14-120-319. Alternative method of assessment — Reassessment.

(a) Any levee district, drainage district, or levee and drainage district in this state, lying in one (1) or more counties, which may hereafter avail itself of the benefits and the power and authority conferred by this subchapter may, at its election and in the alternative, have the assessment of benefits made in the manner provided in the law under which it operates, and the tax on the assessed benefits shall be levied in the manner and by the means provided in the law under which it operates, notwithstanding the provisions of §§ 14-120-313—14-120-318 and 14-120-328—14-120-332 of this subchapter directing:

(1) The manner and method of making the assessment of benefits estimated to accrue to the lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines, and underground cables, pipelines, and all other real property and interests in real property situate within the boundaries of such district;

(2) The levy of the annual tax on the assessment of benefits; and

(3) The method of providing for the collection and enforcement of payment of the tax.

(b) In the levee district, drainage district, or levee and drainage district, which may hereafter adopt the alternative method provided in this section, the amount of interest which will accrue on bonds authorized to be issued by the district shall be included and added to the tax, but the interest to accrue on account of the issuing of the bonds shall not be considered as a part of the cost of construction in determining whether or not the expenses and cost of making the improvements are

or are not equal to or in excess of the benefits assessed.

(c) The landowners in any district which may adopt the alternative method provided in this section shall have the privilege of paying their assessments of benefits in full within thirty (30) days after the assessment becomes final. But all such assessments not paid in full shall be made payable in installments, so that not more than twenty-five percent (25%) shall be collectible in any one (1) year against the wishes of the landowner. In the event that any landowner avails himself of this indulgence, the deferred installments of the assessed benefits shall bear interest at the rate of six percent (6%) per annum and shall be payable only in installments as levied. The levy of the assessment may be made by way of proportional amounts of the total assessed benefits. Interest need not be calculated until it is necessary to do so to avoid exceeding the total amount of benefits and interest.

(d) A reassessment of benefits may be made in the district which may adopt the alternative method provided in this section not more often than once a year, and the reassessment shall be made by the commissioners, directors, or assessors, respectively, of the districts as was authorized for the original assessment. The reassessment shall be made in the same form, after the same notice, hearing, and right of appeal as were provided for the original assessment and with the same time limitation on right of appeal and suits attacking the assessment of benefits as provided for the original assessment of benefits. The installments thereof shall be levied, extended, and collected at the same time, in the same manner, by the same officers, and with the same lien and penalties for delinquencies as were provided for the original assessment. If in the district the original assessment of benefits was made by assessors, the board of directors or commissioners of the district shall have the power to fill any vacancies in the board of assessors; or, if in the district the power of the board of assessors was exhausted on making the original assessment, the board of commissioners or directors of the district shall have the power to appoint a new board of assessors composed of the same number and with the same qualifications as the original board. The new board shall have all powers to make the reassessments herein provided for as were conferred on the original board of assessors.

#### **CASE NOTES**

#### "Levy" Construed.

Although no Arkansas cases describe "levy," Arkansas cases, statutes, and constitution use the word to mean to impose a

tax under authority of law. Price v. Drainage Dist. No. 17, 302 Ark. 64, 787 S.W.2d 660 (1990).

#### 14-120-320. Collectors.

(a) The qualified and acting tax collectors of levee districts, drainage districts, or levee and drainage districts which may hereafter avail themselves of the powers, authority and benefits conferred by this subchapter, are charged with the duty of collecting the annual tax levied under the provisions of this subchapter.

(b) The collectors shall collect the tax herein provided to be levied at the same time and in the same manner as is now fixed by law and shall receive compensation therefor as the board of directors of the district

may provide.

**History.** Acts 1961, No. 20, § 13; A.S.A. 1947, § 21-851.

# 14-120-321. Penalty for delinquency — Enforcement proceedings generally.

(a) If the annual tax levied as provided in this subchapter is not paid within the time fixed by law:

(1) A penalty of twenty-five percent (25%) shall at once attach for the

delinquency; and

(2) The board of directors of the district shall enforce the collection of the taxes and penalty by a proceeding filed in the chancery court of the

county in which the delinquent property is situated.

(b) The court shall give judgment against the delinquent lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines and underground cables, pipelines, and all other real property and interests in real property situate within the boundaries of the district for the amount of the delinquent taxes, penalty and interest at the rate of six percent (6%) per annum from the date of delinquency, and all costs of the proceeding, and may include a reasonable attorney fee.

(c) The judgment so rendered by the court shall provide for the sale of the delinquent lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines and underground cables, pipelines, and all other real property and interests in real property situate within the boundaries of the district by a commissioner to be appointed by the court after advertisement in the manner and form set out in this subchapter.

(d) It shall not be necessary that the true ownership of the lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines and under-

ground cables, pipelines, and all other real property and interests in

real property be alleged in the proceedings.

- (e) The judgment so rendered shall be enforced wholly against the lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines and underground cables, pipelines, and all other real property and interests in real property and not against any other property or estate of the owner.
- (f) All or any part of the delinquent lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines, and underground cables, pipelines, and all other real property and interest in real property, and the taxes delinquent thereon for one (1) or more years, may be included in one (1) suit for each county, instituted for the collection of the delinquent taxes, penalty, interest, and costs. The proceeding shall be a proceeding in rem.

**History.** Acts 1961, No. 20, § 13; 1977, No. 233, § 1; A.S.A. 1947, § 21-851.

## 14-120-322. Filing complaint of delinquency - Notice.

(a) The board of directors of the district shall file its complaint, setting out the list of delinquent lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines and underground cables, pipelines, and all other real property and interests in real property, each being set opposite the name of the supposed owner, as shown by the delinquent lists, and followed by the total amount of taxes and penalty due upon each separate tract thereof.

(b) Thereupon, the clerk of the court shall cause to be published a notice containing the list of lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines and underground cables, pipelines, and all other real property and interests in real property with the names of the supposed owners, as shown by the delinquent lists, and amounts due in a newspaper published in the county for two (2) weekly insertions prior

to any day of the next term of the chancery court.

(c) The notice shall call upon the supposed owners named in the complaint, and all other persons claiming any interest whatever in lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines and underground cables, pipelines, and all other real property and interests in real property to appear and show cause why a decree should not be rendered condemning property for sale for the delinquent taxes, interest, penalty, and costs.

(d) The notice may be in the following form:

"Board of Directors, ......District

VS.

Certain Lands

Any and all persons or corporations having or claiming an interest in any of the following described lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines and underground cables, pipelines, and all other real property and interests in real property, are hereby notified that suit is pending in the Chancery Court of ...... County, Arkansas, to enforce the collection of certain taxes on the subjoined list of property, together with the amounts severally due upon each, to wit:"

(Then shall follow a descriptive list of the lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines and underground cables, pipelines, and all other real property and interests in real property and

amounts due thereon respectively as aforesaid.)

(e) The published notice may conclude in the following form:

"All persons and corporations interested in the lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines and underground cables, pipelines, and all other real property and interests in real property, are hereby notified that they are required by law to appear and make defense to the suit or the same will be taken for confessed, and judgment final will be entered directing the sale of the lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines and underground cables, pipelines, and all other real property and interests in real property, and for the purpose of collecting said delinquent taxes together with the payment of interest, penalty, and costs allowed by law.

Clerk of the Court"

**History.** Acts 1961, No. 20, § 13; 1977, No. 233, §§ 1, 2; A.S.A. 1947, § 21-851.

## 14-120-323. Trial date — Continuance or dismissal.

(a) The suit shall stand for trial on any day of the first term of court held after the filing of the complaint, provided that two (2) weeks' publication shall have been made, as directed in this subchapter, before the day of trial, unless a continuance is granted for good cause shown within the discretion of the court.

(b) Continuance may be granted as to part of the delinquent lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines and underground cables, pipelines, and all other real property and interests in real property, without affecting the disposition finally of other tracts, as to which no such continuances are granted.

(c) After the complaint is filed and before a decree is rendered, any person may have the complaint dismissed as to tracts of lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads,

tramroads, telegraph, telephone, and electric power lines and underground cables, pipelines, and all other real property and interests in real property by paying to the clerk of the court the taxes with interest at six percent (6%) per annum thereon from the date they were due and payable, a penalty of twenty-five percent (25%) of the amount of taxes due upon such tract and all costs of the proceeding attributable to the tract.

**History.** Acts 1961, No. 20, § 13; 1977, No. 233, § 2; A.S.A. 1947, § 21-851.

## 14-120-324. Trial procedure.

(a) The suit shall be conducted in accordance with the practice and procedure of chancery courts in this state, except as provided in this subchapter. However, no affidavit shall be required for the publication of the notice, and neither attorneys nor guardians ad litem, nor any provision of § 16-65-403 [repealed], shall be required, and the suits may be disposed of on oral testimony, as in proceedings at law.

(b) The provisions of this subchapter shall be liberally construed to give the assessment list the effect of a bona fide mortgage for a valuable consideration and to constitute a first lien upon the property as against

all persons having any claim to, or interest in the property.

(c) No informality or irregularity in the levying of the tax or in the description or valuation of the property shall be held a valid defense to the proceedings.

**History.** Acts 1961, No. 20, § 13; A.S.A. 1947, § 21-851.

## 14-120-325. Decree — Sale of real property by commissioner.

(a) If the taxes, interest, penalty, and costs are not paid before the

day of the taking of the decree, the court shall:

(1) Enter a decree condemning the lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines and underground cables, pipelines, and all other real property and interests in real property, for sale for the payment of the taxes, interest, penalty, and costs and may include a reasonable attorney fee; and

(2) Appoint a commissioner to make the sale for the satisfaction

thereof, upon such notice as the court may direct.

(b) The decree of the court shall direct that:

(1) The sale be made to the highest bidder for cash; and

(2) If no person bids the amount of taxes, penalty, interest, and costs, and attorney's fee if included, then the board of directors of the district shall be deemed the purchaser thereof and the commissioner shall execute a deed to the district on request.

**History.** Acts 1961, No. 20, § 13; A.S.A. 1947, § 21-851.

#### 14-120-326. Execution of deed.

(a) It shall be the duty of the commissioner to execute his deed to the purchaser of each separate tract as in other chancery proceedings.

(b) The effect of the commissioner's deed so executed shall be to convey to the purchaser of the lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines and underground cables, pipelines, and all other real property and interests in real property the title in fee to the real property and interests in real property against all persons.

**History.** Acts 1961, No. 20, § 13; A.S.A. 1947, § 21-851.

## 14-120-327. Redemption of property — Vacation of decree.

Notwithstanding the provisions of § 14-120-326, the owner of any lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines and underground cables, pipelines, and all other real property and interests in real property, sold in the manner provided in this subchapter, may redeem the property within two (2) years after the date of the sale. Furthermore, owner of the lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines and underground cables, pipelines, and all other real property and interests in real property, at any time within three (3) years after the date of sale, may file his petition in the same court, alleging the payment of the taxes on the lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines and underground cables, pipelines, and all other real property and interests in real property, for the years for which they were sold. Upon the establishment of that fact, the court shall vacate and set aside the decree and the deed issued by the commissioner thereunder as to the lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines and underground cables, pipelines, and all other real property and interests in real property lying within the boundaries of the district.

**History.** Acts 1961, No. 20, § 13; A.S.A. 1947, § 21-851.

## 14-120-328. Authority to borrow money and issue bonds — Purpose.

For the purpose of enabling the board of directors of any levee district, drainage district, or levee and drainage district to carry out the obligations imposed upon it by the act under which it was originally created and the obligations assumed by it for flood control and drainage works under the provisions of subchapter 2 of this chapter and amendments thereto, the board of directors of the levee district, drainage district, or levee and drainage district is authorized to borrow money and to that end may issue negotiable bonds or notes of the district.

**History.** Acts 1961, No. 20, § 14; 1981, No. 425, § 27; A.S.A. 1947, § 21-852.

## 14-120-329. Sale of bonds — Interest coupons.

(a) Bonds or notes may be sold and negotiated in any market, either

at public or private sale, and may be made callable.

(b) The terms of sale, the rate of interest, and other conditions of the bonds or notes shall be as the board of directors of the district shall direct.

(c) A place of payment and the amount of the several installments to be paid each year may be fixed by the board.

(d) The bonds or notes so issued shall be signed by the president of

the board and countersigned by the secretary.

(e) If the bonds are issued, the interest thereon shall be represented by semiannual coupons authenticated by the lithographed signature of the president of the board.

**History.** Acts 1961, No. 20, § 14; 1981, No. 425, § 27; A.S.A. 1947, § 21-852.

## 14-120-330. Disposition and use of bond proceeds.

The proceeds derived from the sale of those bonds or notes shall be paid to the treasurer of the district and may be used for the operation of the district in carrying out the purposes for which it was originally created and those assumed by it under the provisions of subchapter 2 of this chapter and acts amendatory thereto.

**History.** Acts 1961, No. 20, § 14; A.S.A. 1947, § 21-852.

## 14-120-331. Lithographing and registration of bonds.

(a) The bonds shall be lithographed with such devices for identification and to prevent imitation as the board of directors may think proper.

(b) The secretary shall register the bonds in a book to be kept for that purpose as the bonds are issued, stating therein the date, number, amount and place of payment, to whom issued and sold of each bond

and shall take a receipt from the person to whom each of the bonds is delivered.

(c) The treasurer of the board shall keep a like register and shall show all bonds paid or taken up by the board, showing when payment was made. No bond or coupon paid or taken up by the board shall again be issued but shall be cancelled by the treasurer and punched with an instrument provided for that purpose.

**History.** Acts 1961, No. 20, § 14; A.S.A. 1947, § 21-852.

## 14-120-332. No compensation for negotiating sale of bonds.

No compensation shall be allowed the treasurer of the district, or any other officer or member of the board of directors, either directly or indirectly, for negotiating the sale of the bonds or paying out the proceeds arising from their sale.

**History.** Acts 1961, No. 20, § 14; A.S.A. 1947, § 21-852.

## 14-120-333. Use of revenues for bond payment — Lien.

(a) To secure the due and prompt payment of both principal and interest of any bonds or notes issued under the provisions of this subchapter, the entire revenue of the district or such fractional part thereof as the board of directors may deem expedient and necessary is pledged.

(b) The board of directors of the district is required to set aside annually from the first revenue collected a sum sufficient in amount to secure and pay the interest on the bonds or notes and the principal, as the interest and principal may become due. Its duty to do so may be

enforced by mandamus proceedings.

(c) The principal and interest of the bonds or notes shall be secured by a lien on all the lands, town lots, suburban lots, rural lots, industrial tracts, blocks, railroads, tramroads, telegraph, telephone, and electric power lines and underground cables, pipelines, and all other real property and interests in real property in the district.

(d) The board of directors may pledge all or any part of the assessment of benefits and its revenues as security for the payment of the

principal and interest of the bonds or notes.

(e) In the event the board of directors fails or refuses to levy and collect the tax in any year in which there are bonds or notes or interest coupons outstanding when the proceeds of the tax are required for the payment of the bonds, notes, or interest coupons, this duty may be enforced by a mandamus or by a mandatory injunction in equity at the instance of any landowner in the district, the trustee in any deed of trust securing the bonds of the district, the holder of any bond, note, or interest coupon as to which the district has defaulted in the payment, or any other creditor of the district.

**History.** Acts 1961, No. 20, § 15; A.S.A. 1947, § 21-853.

## Subchapter 4 — Alternative Procedure for Extension, Collection, and Payment of Assessments and Taxes

SECTION.	SECTION.
14-120-401. Legislative intent.	14-120-407. Commissions.
14-120-402. Definition.	14-120-408. Notice of sale of land for non-
14-120-403. Resolution.	payment of taxes in cer-
14-120-404. Due dates of taxes.	tain districts.
14-120-405. Delinquencies.	14-120-409. Business interest exemption
14-120-406. Disposition of taxes col-	for districts with land in
lected.	four or more counties.

Effective Dates. Acts 1980 (1st Ex. Sess.), No. 19, § 5: Jan. 25, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that the method of collection of levee district taxes may be inefficient in some districts and therefore would not allow the fullest utilization of taxes received for flood control; and unnecessary and legally unprecedented notice requirements for

sale of land for nonpayment of assessments obstruct the assessment collection system; and only by immediate passage of this Act may the situation be corrected. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

## 14-120-401. Legislative intent.

Sections 14-120-402 — 14-120-408 of this subchapter shall not repeal any existing laws but are intended to provide an alternative procedure for the extension and collection of taxes and assessments that may be adopted by any board of directors which now collects taxes and assessments in a manner other than provided for by this subchapter.

**History.** Acts 1980 (1st Ex. Sess.), No. 19, § 3; A.S.A. 1947, § 21-859.2.

#### 14-120-402. Definition.

As used in this subchapter unless the context otherwise requires, "board of directors" means the governing body of levee districts, drainage districts, or levee and drainage districts and includes the term "board of commissioners."

**History.** Acts 1980 (1st Ex. Sess.), No. 19, § 1; A.S.A. 1947, § 21-859.

#### 14-120-403. Resolution.

Notwithstanding the provisions of any special or general act, the board of directors of any levee district, drainage district, or levee and drainage district collecting taxes and assessments by special collectors may, by resolution adopted by a majority of the directors, change such method of collection and direct that the amount of taxes levied and assessed by the district shall annually be extended upon the tax books of the county or counties within which the lands so assessed and taxed are located and annually collected by the tax collectors in each county or counties along with the other taxes. Upon the adoption of that resolution, the clerk and tax collector of each county shall be charged with the duty of extending and collecting the annual tax and assessment levied by the districts.

**History.** Acts 1980 (1st Ex. Sess.), No. 19, § 1; A.S.A. 1947, § 21-859.

#### 14-120-404. Due dates of taxes.

All such taxes levied and assessed shall be deemed to be due and payable at any time from the third Monday in February to and including October 10 in the year levied and shall be a lien upon and bind the property upon which it is levied and entitled to preference over all demands, executions, encumbrances, or liens from the first Monday in January of the year in which the assessment shall be made. It shall continue until the taxes, together with any penalties which may accumulate thereon, shall be paid. However, as between grantor and grantee, the lien shall not attach until the last date fixed by law for the county clerk to deliver the tax books to the collector in each year.

**History.** Acts 1980 (1st Ex. Sess.), No. 19, § 1; A.S.A. 1947, § 21-859.

## 14-120-405. Delinquencies.

If taxes and assessments shall not be paid at maturity, the collector shall not embrace such taxes in the taxes for which he shall sell the land but shall, on or before the date fixed by law for making settlement with the county treasurer for general taxes, make out and file with the board of directors of the district a list of all real property which lies in the county and which is delinquent for nonpayment of said taxes and retain a copy for use in collecting such delinquent taxes. The board of directors of the district shall enforce the collection of such taxes and the penalties thereon in the manner now provided by law.

**History.** Acts 1980 (1st Ex. Sess.), No. 19, § 1; A.S.A. 1947, § 21-859.

### 14-120-406. Disposition of taxes collected.

The net amount of the taxes collected for the district shall be paid over by the collector to the board of the district at or before the time the collector is now required to make settlement with the county treasurer for general taxes.

**History.** Acts 1980 (1st Ex. Sess.), No. 19, § 1; A.S.A. 1947, § 21-859.

#### 14-120-407. Commissions.

The county clerk and tax collector shall receive commissions for the extension and collection of the taxes as are now or may hereafter be provided by law.

**History.** Acts 1980 (1st Ex. Sess.), No. 19, § 1; A.S.A. 1947, § 21-859.

## 14-120-408. Notice of sale of land for nonpayment of taxes in certain districts.

Notwithstanding the provisions of §§ 14-86-1401 — 14-86-1405, and any other provision relating to giving notice prior to selling or filing suit for sale of lands for nonpayment of improvement district assessments, the provisions of subchapter 3 of this chapter shall be the only notice requirement applicable to any improvement district embracing lands in four (4) or more counties for selling or filing suit to sell any lands for nonpayment of improvement district assessments.

**History.** Acts 1980 (1st Ex. Sess.), No. 19, § 2; A.S.A. 1947, § 21-859.1.

# 14-120-409. Business interest exemption for districts with land in four or more counties.

The members of the board of directors of any improvement district consolidated pursuant to the provisions of subchapter 3 of this chapter, which encompasses lands located in four (4) or more counties, shall not be required to file the written statement required by §§ 21-8-301 — 21-8-305, 21-8-306 — 21-3-309.

**History.** Acts 1980 (1st Ex. Sess.), No. 19, § 4; A.S.A. 1947, § 21-859.3.

**Publisher's Notes.** Sections 21-8-305 — 21-8-309, referred to in this section, were repealed by Acts 1989, No. 719; however, Acts 1991, No. 326, reenacted §§ 21-

8-305 — 21-8-309, as modified by Acts 1989, No. 719, § 5. As to legislative intent of Acts 1991, No. 326, and derivation of former §§ 21-8-306 — 21-8-309, see notes to §§ 21-8-305 and 21-8-306.

### SUBCHAPTER 5 — JUDICIAL REVIEW OF ASSESSMENT OF BENEFITS

SECTION.

14-120-501. Right to review — Construction.

14-120-502. Petition for review.

14-120-503. Hearing and determination.

14-120-504. Certification to district of court's determination.

SECTION.

14-120-505. Appeal to Supreme Court.

14-120-506. Suit to collect taxes on property in custody of another

ourt.

14-120-507. Reduction of penalty for delinquency.

Effective Dates. Acts 1939, No. 60, § 7: approved Feb. 9, 1939. Emergency clause provided: "It being found that a speedy administrative remedy for determining the proper assessments of benefits in drainage districts, levee districts, and drainage and levee districts, is necessary both for the convenience and protection of

the property owners in the districts and the collection of the taxes due the district, thereby avoiding delays detrimental to the public interests which the districts were created to promote and conserve, an emergency is found to exist and is hereby declared, and this act shall take effect and be in force from and after its passage."

## 14-120-501. Right to review — Construction.

(a) Any person aggrieved by an assessment of benefits established against his property in any drainage district, levee district, or drainage and levee district, whether created under general laws or by special acts, may have the assessment reviewed by the chancery court of the county in which the property is situated or by the chancery court of the county in which the district has its domicile if the property involved is in more than one (1) county.

(b) The right of review provided in this subchapter shall be construed to be an enlargement of the administrative remedies now provided by

law.

**History.** Acts 1939, No. 60, § 1; A.S.A. 1947, § 21-810.

## 14-120-502. Petition for review.

(a) The petition for review shall be filed within thirty (30) days from the date when the assessment is completed and would, except for the purpose of review, become effective.

(b) A copy of the petition shall be delivered to the president of the district or to the chairman of its board of directors or commissioners.

**History.** Acts 1939, No. 60, § 2; A.S.A. 1947, § 21-811.

### 14-120-503. Hearing and determination.

- (a) The court shall hear the petition as expeditiously as possible. It shall have power to lower, raise, equalize, and determine the proper assessment of benefits established against the property described in the petition.
- (b) The amount and legality of an assessment made by any district, in the absence of a petition for a review, shall be conclusive.

**History.** Acts 1939, No. 60, § 3; A.S.A. 1947, § 21-812.

### 14-120-504. Certification to district of court's determination.

As soon as the court determines the proposed assessment of benefits under any petition pending before it, the clerk of the court shall promptly certify the assessment to the district so that the district taxes may be extended against it.

**History.** Acts 1939, No. 60, § 4; A.S.A. 1947 § 21-813.

## 14-120-505. Appeal to Supreme Court.

- (a) An appeal may be prosecuted from the assessment determined by the court, but the transcript shall be filed with the Clerk of the Supreme Court within sixty (60) days from the rendition of its determination by the chancery court.
- (b) The Supreme Court shall advance the appeal on its docket as involving a matter of public interest.

**History.** Acts 1939, No. 60, § 5; A.S.A. 1947, § 21-814.

## 14-120-506. Suit to collect taxes on property in custody of another court.

In suits by a drainage district, levee district, or drainage and levee district to collect taxes on any property in the custody of a court other than that in which the tax suit is brought, the decree shall adjudicate the amount and legality of the tax. The district shall file a certified copy of the decree in the court having the custody of the property for appropriate action for the payment of the tax.

**History.** Acts 1939, No. 60, § 6; A.S.A. 1947, § 21-815.

### 14-120-507. Reduction of penalty for delinquency.

In all drainage districts organized by special act of the General Assembly in which the penalty is now twenty-five percent (25%) for failure to pay drainage district taxes within the time designated by the act, the commissioners of any drainage or levee district, at their discretion, may reduce all or any part of the penalty as low as ten percent (10%).

**History.** Acts 1941, No. 332, § 1; A.S.A. 1947, § 21-816.

Cross References. Remission of penalties exceeding 10 percent, § 14-86-1002.

#### Subchapter 6 — Certain Boards of Commissioners

SECTION.	SECTION.
14-120-601. Subchapter supplemental.	missioners — Order.
14-120-602. Applicability.	14-120-606. Terms of office in districts
14-120-603. Determination of number of	having three commission-
commissioners.	ers.
14-120-604. Increase in number of com-	14-120-607. Terms of office in districts
missioners.	having five commissioners.
14-120-605. Petition by majority of land-	14-120-608. Filling vacancies and new
owners or existing com-	positions.

## 14-120-601. Subchapter supplemental.

The provisions of this subchapter shall be supplemental to the laws of this state governing levee and drainage districts and shall repeal only those laws or parts of laws which are specifically in conflict with this subchapter. It is the intent of the General Assembly that this subchapter shall not modify, affect, or repeal any of the existing levee and drainage district laws of this state, except to the extent the laws conflict with the provisions of this subchapter.

**History.** Acts 1971, No. 105, § 9; A.S.A. 1947, § 21-505.9.

## 14-120-602. Applicability.

(a) This subchapter shall not apply to any drainage district or levee district, or combination of districts, which, under present law, are governed by more than five (5) commissioners, nor shall it apply to any such districts governed by commissioners who are elected under existing law.

(b) Laws concerning all such districts and other laws governing improvement and drainage and levee districts shall continue in full

force and effect.

**History.** Acts 1971, No. 105, § 1; A.S.A. sioners in drainage districts, § 14-121-1947, § 21-505.2. 301 et seq. **Cross References.** Board of commis-

#### 14-120-603. Determination of number of commissioners.

All drainage districts, levee districts, or combinations of such districts shall have either three (3) or five (5) commissioners, the exact number of which shall be determined by the court having jurisdiction of the formation of the district.

**History.** Acts 1971, No. 105, § 2; A.S.A. 1947, 21-505.3.

### 14-120-604. Increase in number of commissioners.

- (a) The boards of commissioners of drainage districts, levee districts, and combinations of such districts which are now composed of only three (3) members may be increased to five (5) members by order of the court having jurisdiction of such districts in accordance with § 14-120-605.
- (b) A petition to increase the number of commissioners may be filed with the court having jurisdiction by any interested taxpayer, and the clerk of the court shall give notice of hearing on the petition by publication for two (2) weeks in some newspaper published and having a general circulation in the county and shall further serve notice on the existing commissioners.
- (c) The time and place of hearing on the petition shall be fixed by the court.

**History.** Acts 1971, No. 105, § 3; A.S.A. 1947, § 21-505.4.

## 14-120-605. Petition by majority of landowners or existing commissioners — Order.

If, upon the hearing provided for in § 14-120-604, a petition is presented to the court signed by landowners against whose lands more than fifty percent (50%) in value of the assessment of benefits in a district is levied, or if the petition is presented to the court by the existing commissioners of the district, the court shall forthwith issue an order that the board of commissioners of the district shall thereafter consist of five (5) members, selected as hereinafter provided.

**History.** Acts 1971, No. 105, § 4; A.S.A. 1947, § 21-505.5.

# 14-120-606. Terms of office in districts having three commissioners.

(a) The terms of office of commissioners in all districts which have three (3) commissioners shall be nine (9) years to serve until their successors are duly selected and qualified as herein set forth.

(b)(1) These terms of office shall begin January 1.

(2)(A) For the initial terms the commissioners shall select one (1) of their number to serve for three (3) years, one (1) to serve for six (6) years, and one (1) to serve for nine (9) years.

(B) The names and terms, so selected shall be certified to the clerk

of the court having jurisdiction on or before January 1.

**History.** Acts 1971, No. 105, § 5; A.S.A. 1947, § 21-505.6.

## 14-120-607. Terms of office in districts having five commissioners.

(a) The term of office of commissioners in all districts which have five (5) commissioners shall be ten (10) years to serve until their successors are duly selected and qualified as set forth in this subchapter.

(b)(1) These terms of office shall begin January 1.

- (2)(A) For the initial terms, the commissioners shall select one (1) of their number to serve for two (2) years, one (1) for four (4) years, one (1) for six (6) years, one (1) for eight (8) years, and one (1) for ten (10) years.
- (B) The names and terms so selected shall be certified to the clerk of the court having jurisdiction on or before January 1.

**History.** Acts 1971, No. 105, § 6; A.S.A. 1947, § 21-505.7.

## 14-120-608. Filling vacancies and new positions.

Vacancies in the office of commissioners, or creation of new positions by increase of number, shall be filled by order of the court having jurisdiction, subject to the following:

- (1) Ten (10) or more landowners against whose lands more than fifty percent (50%) in value of the assessment of benefits in a district is levied may, at any time, petition the court to remove a commissioner or commissioners and to appoint designated qualified persons as successors, and the court shall forthwith enter an order to that effect.
- (2) In the event of expiration of term of office, removal, or vacancy from any other cause, and in the absence of a petition as specified in the preceding subdivision, the court, on petition of any number of landowners or by the remaining commissioners, shall enter an order making the appointments. It shall cause notice to be published once a week for two (2) weeks in a newspaper or newspapers having general circulation in each of the counties involved in the district of the entry of its order appointing named commissioners for specified terms. Such notice shall specify a time and place for hearing, which shall be not less than ten (10) days after first publication of notice, at which time objections to such appointments will be heard. At the hearing the court may confirm the appointments or appoint any other qualified person.

**History.** Acts 1971, No. 105, § 7; A.S.A. 1947, § 21-505.8.

### SUBCHAPTER 7 — MAINTENANCE OF FACILITIES

SECTION.
14-120-701. Purpose and intent.
14-120-702. Authority and powers of board of commissioners.
14-120-703. Maintenance requirements.

14-120-704. Failure to maintain structures.

14-120-705. Collection and expenditure of tax — Costs.

## 14-120-701. Purpose and intent.

(a) It is the express purpose and intent of this subchapter to require levee and drainage districts to keep their facilities in proper repair, whenever the districts shall have given assurances to the federal government that maintenance of a facility would be provided upon its completion.

(b) In imposing the duty upon levee and drainage districts, the General Assembly takes cognizance of the fact that many levee and drainage facilities in the State of Arkansas are constructed through the cooperation of the federal government and that adequate maintenance of these facilities in good faith is extremely important if the State of Arkansas is to continue to receive the benefit of future development of levee and drainage projects in this state by the federal government.

(c) The General Assembly also recognizes that a number of levee or drainage districts may be involved in an overall connecting levee or drainage project that results in mutual benefits to all districts in the affected area.

(d) If one (1) or more of these districts fails to provide adequate maintenance according to the assurance given the federal government, the lack of maintenance can jeopardize the entire project.

(e) Therefore, each district shall have the duty of maintaining its facility and shall not endanger the facilities of the other districts in the affected area.

- (f) In addition, the General Assembly recognizes that the policies of Congress in planning future levee and drainage work in the State of Arkansas will be influenced by the adequacy with which levee and drainage districts in this state provide maintenance of existing facilities according to the terms of the assurances given the federal government.
- (g) In order to encourage Congress to continue to make available funds for future development and improvement of levee and drainage projects in this state, the General Assembly recognizes that the State of Arkansas must take steps to see that the assurances given to the federal government by levee and drainage districts as authorized by the laws of this state shall be fulfilled. It is declared that the purpose of this subchapter is to require that maintenance shall be provided.

**History.** Acts 1957, No. 72, § 3; A.S.A. 1947, § 21-835.

## 14-120-702. Authority and powers of board of commissioners.

(a) The board of commissioners of any drainage or drainage and levee district organized under the laws of the State of Arkansas are authorized and empowered to purchase, lease, or rent, separately as individual districts or jointly with other districts such machinery, equipment, and material to be used in repairing, deepening, widening, clearing, and maintaining the ditches and levees of their districts.

(b) The board of commissioners is further authorized and empowered to employ personnel as necessary and incident to the use of the

machinery, equipment, and material obtained.

(c) For the purpose of carrying out the provisions of this subchapter, drainage districts, and levee and drainage districts are authorized to levy a maintenance tax and obtain funds as now provided by law.

**History.** Acts 1957, No. 72, § 4; A.S.A. 1947, § 21-836.

# 14-120-703. Maintenance requirements.

- (a) Whenever any levee or drainage district in the State of Arkansas shall have given assurances to the United States Army Corps of Engineers or other appropriate federal agency that the levee or drainage district will maintain any levee or drainage facility upon its completion by the federal government, then that levee or drainage district shall maintain the levee or drainage facility according to the terms of the assurance agreement entered into with the federal government.
- (b) It shall be the duty of the board of commissioners of all levee and drainage districts to take all appropriate action to maintain their levee and drainage facilities according to the assurances given to the federal government.

**History.** Acts 1957, No. 72, § 1; A.S.A. 1947, § 21-833.

# 14-120-704. Failure to maintain structures.

(a)(1) Whenever any levee or drainage district shall fail, refuse, or neglect to maintain the levee and drainage structures after completion, in compliance with the assurances given the federal government, then the United States Army Corps of Engineers may give written notice to the officers of the levee and drainage district and in the notice shall set forth the plans and specifications and estimate of cost of restoring and maintaining the structures in accordance with the assurances given.

(2) The levee and drainage district shall take steps to comply with the specifications and requirements made by the United States Army

Corps of Engineers within six (6) months after receiving notice.

- (3) In the event that the levee and drainage district has not taken steps to comply therewith within the period of time above provided, then the United States Army Corps of Engineers may give written notice to the Attorney General of the State of Arkansas that the levee and drainage district has failed, refused, or neglected to comply with the requirements and upon receipt of written notice from the United States Army Corps of Engineers to the Attorney General of the State of Arkansas, then the Attorney General shall immediately bring a mandamus suit in a court of competent jurisdiction in the name of the State of Arkansas against the officers, commissioners, or directors of the levee and drainage district in the county in which the domicile of the district is situated. However, in the mandamus proceedings, if it is shown that the district has insufficient funds to meet and fulfill these requirements, then it shall be deemed a compliance with this subchapter if the district has taken steps to assess and levy a sufficient maintenance tax.
- (b)(1) Where the board of commissioners of a drainage or levee district has indicated by resolution that it will not comply with the specifications and requirements contained in the notice of the United States Army Corps of Engineers, the Attorney General may immediately, in lieu of a mandamus proceeding against the commissioners of the district, bring an action and take other necessary legal steps in the proper local court, or courts, in the name of the State of Arkansas against the delinquent levee or drainage district, or subdivision thereof, or the board of commissioners thereof to effectuate, in the manner now provided by law, the assessment, reassessment, extension, or collection of a sufficient annual tax upon the real property in the levee or drainage district to enable the performance of the assurances given to the federal government.
- (2) The Attorney General may also bring the action where the board of commissioners has failed to perform the assurances after the giving of the notice above specified.

**History.** Acts 1957, No. 72, § 2; 1957, No. 416, § 1; A.S.A. 1947, § 21-834.

**Publisher's Notes.** Acts 1957, No. 416, § 2, provided: "This Act shall be cumulative to the provisions of Act 72 of the Acts of the General Assembly of the State of Arkansas for 1957."

# 14-120-705. Collection and expenditure of tax — Costs.

(a) In all proceedings for the imposition and collection of an annual tax upon the real property in the levee or drainage district, the powers and duties of the Attorney General in this respect shall cease when the order of the proper court in the matter has become final.

(b) The actual collection and expenditure of the tax shall be left to

the board of directors or commissioners.

(c) If the board fails or refuses to make the collection and expenditure, mandamus proceedings may be instituted, or, in case a district is without representation, the Attorney General may, in the name of the State of Arkansas, petition the proper local court for a receiver for the district to collect and expend the taxes.

(d) The order of the court in all such proceedings shall provide for the payment of the legal costs, including a reasonable fee for the Attorney General, by the defendant district.

(e) The order of the court in imposing an assessment or reassessment of taxes upon the real property in the district shall take into account the costs and expenses.

**History.** Acts 1957, No. 72, § 2; 1957, No. 416, § 1; A.S.A. 1947, § 21-834.

**Publisher's Notes.** Acts 1957, No. 416, § 2, provided: "This Act shall be cumulative to the provisions of Act 72 of the Acts of the General Assembly of the State of Arkansas for 1957."

## **CHAPTER 121**

## DRAINAGE IMPROVEMENT DISTRICTS GENERALLY

#### SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. DISTRICT ESTABLISHMENT.
- 3. Board of Commissioners.
- 4. DISTRICT OPERATION GENERALLY.
- 5. Subdistricts.
- 6. Forming Maintenance Districts Within Original Districts.
- 7. Annexing Certain Benefited Lands to District.
- 8. CONSTRUCTION AND MAINTENANCE GENERALLY.
- 9. CLEANING PUBLIC DRAINS.
- 10. DISSOLUTION OR ABOLITION OF DISTRICTS.

#### RESEARCH REFERENCES

**Ark. L. Rev.** Lex Aquae Arkansas, 27 Ark. L. Rev. 429.

UALR L.J. Looney, Diffused Surface

Water in Arkansas: Is It Time for a New Rule?, 18 UALR L.J. 3.

#### **CASE NOTES**

#### Constitutionality.

This chapter is not in conflict with Ark. Const., Art. 2, § 23. Less Land Co. v. Fender, 119 Ark. 20, 173 S.W. 407 (1915).

This chapter does not deprive the owners of their property without due process

of law nor deny them the equal protection of the law. Less Land Co. v. Fender, 119 Ark. 20, 173 S.W. 407 (1915).

# SUBCHAPTER 1 — GENERAL PROVISIONS

#### SECTION.

14-121-101. Definitions.

14-121-102. Applicability.

14-121-103. Special court sessions.

#### SECTION.

14-121-104. Appeals not to delay work. 14-121-105. Obstructing or damaging drainage works — Penalty. **Cross References.** Extension of powers of improvement districts, § 14-118-301 et seq.

Municipal drainage improvement districts, § 14-115-101 et seq.

Relocation assistance payments, § 22-9-701 et seq.

Tort liability immunity, § 21-9-301 et

Effective Dates. Acts 1909, No. 279, § 35: effective on passage.

Acts 1911, No. 54, § 2: effective on passage.

Acts 1913, No. 177, § 22: approved Mar. 13, 1913. Emergency declared.

## 14-121-101. Definitions.

(a) As used in this act, unless the context otherwise requires:

(1) "Real property" shall have the same meaning as when used in § 26-1-101 et seq. and shall embrace all railroads and tramroads within the district;

(2) "Ditch" includes branch or lateral ditches, tile drains, levees, sluiceways, floodgates, and any other construction work found necessary for the reclamation of wet and overflowed land.

(b) Whenever the words "county court" or "county judge" are used in this act, they shall be construed to mean "circuit court" or "circuit judge," and the words "county clerk" shall mean "circuit clerk" in cases where the district contains lands in more than one (1) county.

**History.** Acts 1909, No. 279, §§ 1, 5, 32, p. 829; 1913, No. 177, § 5; C. & M. Dig., §§ 3611, 3638; Pope's Dig., §§ 4459, 4489; A.S.A. 1947, §§ 21-501, 21-511, 21-566.

**Meaning of "this act".** Acts 1909, No. 279, codified as §§ 14-121-101, 14-121-102, 14-121-104, 14-121-105, 14-121-201

#### CASE NOTES

ANALYSIS

Circuit court. Ditch. Real property.

#### Circuit Court.

This section authorizes an original proceeding in the circuit court to establish a drainage district. Grassy Slough Drainage Dist. v. National Box Co., 111 Ark. 144, 163 S.W. 512 (1914).

#### Ditch.

The word "ditch" includes "levees."

Grassy Lake & Tyronza Drainage Dist. v. Drainage Dist. No. 17, 205 Ark. 694, 170 S.W.2d 1007 (1943).

#### Real Property.

Nothing in this section authorizes the assessment of benefits against county roads. Board of Comm'rs v. Arkansas County, 179 Ark. 91, 14 S.W.2d 226 (1929).

Cited: Greer v. Blocker, 218 Ark. 259, 236 S.W.2d 68 (1951); Cherry v. Cousart Bayou Drainage Dist., 222 Ark. 404, 259 S.W.2d 513 (1953).

## 14-121-102. Applicability.

(a) This act shall apply to the organization of districts, the main object of which is the construction of levees.

(b) This act shall not repeal the drainage laws now in force, but it is

an alternative system.

(c) Drainage districts may be organized under this act or under the statutes which are in force at the time of the passage of this act.

**History.** Acts 1909, No. 279, §§ 32, 34, p. 829; 1911, No. 54, § 1; 1911, No. 221, § 5; 1913, No. 177, § 5; C. & M. Dig., §§ 3638, 3654; Pope's Dig., §§ 4489, 4505; A.S.A. 1947, §§ 21-566, 21-567.

**Publisher's Notes.** In reference to the term "the time of the passage of this act", Acts 1909, No. 279, § 35, provided that the act would be in effect and in force from

and after its passage. The act was signed by the Governor on May 27, 1909.

The former law relating to drainage districts that was in effect when Acts 1909, No. 279 was passed was Acts 1903, No. 159, which was repealed by Acts 1935, No. 60.

Meaning of "this act". See note to § 14-121-101.

#### CASE NOTES

#### Levees.

A drainage district may construct a levee where necessary to prevent the overflowing and filling up of its ditches. Britt v. Laconia Circle Special Drainage Dist., 165 Ark. 92, 263 S.W. 48 (1924); Drainage Dist. No. 18 v. Cornish, 198 Ark. 857, 131 S.W.2d 938 (1939).

The county court may establish a drainage district which may construct a levee to protect lands from overflows. Walker v. Roland Drainage Dist., 212 Ark. 633, 207 S.W.2d 319 (1948).

# 14-121-103. Special court sessions.

The county and circuit court may, at the request of the commissioners of the district, at any time hold special sessions for the purpose of:

(1) Acting upon any petition or report; or

(2) Making any order in a matter involving any drainage district.

**History.** Acts 1913, No. 177, § 15; C. & M. Dig., § 3647; Pope's Dig., § 4498; A.S.A. 1947, § 21-563.

#### CASE NOTES

#### Circuit Court Jurisdiction.

The circuit court has jurisdiction to hold a special term, not only where it has formed a drainage district, but also to hear an appeal from the county court questioning the correctness of a drainage assessment. Kirten v. Chicot County Drainage Dist., 161 Ark. 334, 256 S.W. 50 (1923).

# 14-121-104. Appeals not to delay work.

No appeal provided for in this chapter shall be allowed to delay the organization of the district or the progress of the work of improvement.

**History.** Acts 1909, No. 279, § 29, p. 829; C. & M. Dig., § 3636; Pope's Dig., § 4488; A.S.A. 1947, § 21-564.

#### **CASE NOTES**

Appellate Jurisdiction.

An appeal from an order of the county court establishing a drainage district does not operate as a stay of proceedings on the judgment appealed from, but this section does not impair the power of the circuit court, or judge thereof in vacation, to make orders in the exercise of its appellate jurisdiction as are necessary to protect the right of the parties in the litigation. Strangways v. Ringgold, 106 Ark. 433, 153 S.W. 619 (1913).

**Cited:** St. Louis, I.M. & S.R. v. Maple Slough Drainage Dist., 138 Ark. 131, 211 S.W. 168 (1919).

# 14-121-105. Obstructing or damaging drainage works — Penalty.

Any person who shall obstruct a drain or damage drainage works provided for by this act shall be guilty of a misdemeanor and fined one hundred dollars (\$100). He shall also be liable to the district for double the cost of removing the obstruction or repairing damage.

**History.** Acts 1909, No. 279, § 31, p. 829; C. & M. Dig., § 3665; Pope's Dig., § 4516; A.S.A. 1947, § 21-565.

Meaning of "this act". See note to \$ 14-121-101.

Cross References. Penalty for obstructing drains generally, § 5-72-105.

#### **CASE NOTES**

Liability for Damages.

Where defendants did not obtain permission from drainage district before constructing dam across a ditch on their lands and torrential rainfall caused ditch to overflow on lands of plaintiffs, defendants

dants were liable to plaintiffs for damages, since negligence of defendants in constructing dam concurred with rainfall to cause overflow on plaintiffs' land. Adams v. Adams, 228 Ark. 741, 310 S.W.2d 813 (1958).

### Subchapter 2 — District Establishment

SECTION.

14-121-201. Petition for establishment —
Engineer and survey —
Bond.

14-121-202. Notice and hearing.

14-121-203. Land in more than one county.

14-121-204. Signatures — Establishment

SECTION.

when no petition is filed. 14-121-205. Effect of order establishing district — Appeal.

14-121-206. Advancement of cases involving validity of organization.

14-121-207. Reorganization of districts

SECTION.

formed under other laws. 14-121-208. Making districts created by special act into districts governed by general law.

**Publisher's Notes.** As to validation of prior proceedings in circuit court, see Acts 1911, No. 221, § 6.

Preambles. Acts 1927, No. 227, contained a preamble which read: "Whereas, there are in this State many drainage districts created by Special Laws, which need amendment, but which cannot be amended under the present constitutional restrictions; and

"Whereas, the general drainage law, which appears as act number 279 of the year 1909, furnishes an adequate uniform system for the operation of drainage districts...."

Effective Dates. Acts 1909, No. 279, § 35: effective on passage.

Acts 1911, No. 54, § 2: effective on passage

Acts 1913, No. 177, § 22: approved Mar. 13, 1913. Emergency declared.

Acts 1921, No. 353, § 3: effective on passage.

Acts 1927, No. 227, § 2: approved Mar. 23, 1927. Emergency clause provided: "It is ascertained and hereby declared that by reason of the deficiencies in various special acts creating drainage districts in this

State such districts are unable to function properly and to perform their duty so that the public health is impaired by stagnant water which they are intended to drain away, and it is therefore declared that an emergency exists, and that for the preservation of the public health this act should go into immediate operation, and it is therefore provided that this act shall be force from and after its passage."

Acts 1957, No. 327, § 7: approved Mar. 27, 1957. Emergency clause provided: "It is hereby ascertained and declared that there are many projects which the U.S. Government might construct if an agency existed for the maintenance of such projects after construction, and that such projects would be of immense benefit to the citizens of this state and that the proper development of the state is being retarded because no agency can be created under the present laws of the state for the maintenance of such projects, and that an emergency exists and this act being necessary for the immediate promotion of public peace, health and safety the same shall take effect and be in force from and after its passage."

# 14-121-201. Petition for establishment — Engineer and survey — Bond.

- (a) It shall be the duty of the county court to enter upon its records an order appointing an engineer to be selected by the petitioners when three (3) or more owners of real property within a proposed district shall:
- (1) Petition the county court to establish a drainage district or a district to construct drainage or drainage and levee improvements in conjunction with the federal government and thereafter to maintain the whole of the improvements, or to maintain drainage or levee improvements constructed wholly or in part by the federal government, to embrace their property, describing generally the region which it is intended shall be embraced within the district; and
- (2) File a good bond to pay for the expense of survey of the proposed district, in case the district is not formed.
- (b) However, the engineer whom they select shall be a suitable person, and if not, an engineer shall be named who is satisfactory to the

court. He shall give bond in a sum not less than one thousand dollars (\$1,000), to be fixed by the court, for the faithful discharge of his duties, and shall be liable upon such bond for negligence or incompetency causing loss to the district.

(c) The engineer shall forthwith proceed to make a survey and ascertain the limits of the region which would be benefited by the

proposed system of drainage.

- (d) The engineer shall file with the county clerk a report showing the territory which will be benefited by the proposed improvement, giving a general idea of its character and expense and making such suggestions as to the size of the drainage ditches and their location as he may deem advisable.
- (e) All expense incident to the survey and cost of publication shall be paid by the county as the work progresses upon proper showing, but all expenses incurred by the county shall be repaid out of the proceeds of the first assessment levied under this act.

**History.** Acts 1909, No. 279, § 1, p. 829; 1911, No. 221, § 1; C. & M. Dig., § 3607; Acts 1921, No. 353, § 1; Pope's Dig., § 4455; Acts 1957, No. 327, § 1; A.S.A. 1947, § 21-501.

Publisher's Notes. Acts 1957, No. 327, § 6, provided that the act would be cumulative and would not repeal any then existing law and would not apply to any district already then organized. The section further provided that the act would not be deemed to take from any levee, drainage, or other improvement district the power or right the district then had to

enter into and perform any contract or agreement of the United States Army Corps of Engineers or other federal agency.

Meaning of "this act". Acts 1909, No. 279, codified as §§ 14-121-101, 14-121-102, 14-121-104, 14-121-205, 14-121-207, 14-121-301, 14-121-304, 14-121-305, 14-121-307, 14-121-310, 14-121-311, 14-121-313, 14-121-401 — 14-121-406, 14-121-408, 14-121-411, 14-121-412, 14-121-422 — 14-121-432, 14-121-440 — 14-121-442, 14-121-802 — 14-121-805, and 14-121-808.

#### **CASE NOTES**

Analysis

Bond for expenses. Petitions. Reports. Surveys.

#### Bond for Expenses.

When a drainage district was formed under this section, a bond for preliminary expenses signed by 15 of the petitioners who were able to discharge the obligation was valid without other sureties. Less Land Co. v. Fender, 119 Ark. 20, 173 S.W. 407 (1915).

A county is not liable for the cost of a preliminary survey where a projected drainage district has not been formed, the petitioners for the district being liable on their bond where the district is not created. Gibson v. Hempstead County, 139 Ark. 26, 212 S.W. 99 (1919).

#### Petitions.

A petition for the formation of a drainage district is sufficient if it shows that the proposed ditch either will be "conducive to the public health, convenience or welfare" or "will be of public utility or benefit." Terre Noir Drainage Dist. v. Thornton, 93 Ark. 332, 124 S.W. 774 (1910).

Where drainage district filed a petition for authority to levy taxes in cleaning and widening ditches in district, the circuit court could not consider issue raised by another drainage district as to whether the entire creek should be cleaned out, since original petition was a special proceeding. Beaver Bayou Drainage Dist. v. Lee-Phillips Drainage Dist., 221 Ark. 550, 254 S.W.2d 465 (1953).

Reports.

In a collateral attack upon the organization of a drainage district, it will be presumed that the county court considered the correctness of the survey and report when the hearing was given to the property owners in response to the published notice; and the fact that the report was filed on the day of the appointment of the engineer will not necessarily imply that the survey was insufficient. Arkansas Land Dev. Co. v. Bayou De View Drainage Dist., 125 Ark. 388, 189 S.W. 48 (1916).

There being no provision in this section for the filing of anything more than a report by the engineer, which must describe the lands to be benefited, the filing also of a map will be treated as surplusage and any variance between the published notice and the description on the map will be immaterial. Arkansas Land Dev. Co. v. Bayou De View Drainage Dist., 125 Ark. 388, 189 S.W. 48 (1916).

Surveys.

In the organization of a drainage district, the boundaries may be designated

and described by reference to natural or artificial monuments; the engineer or surveyor is not required to outline the boundaries of lands by reference to plats only. If the boundaries of the district or the boundaries of lands contained therein are described so that the landowners and county courts can understand where they are, such description would be sufficient. Hudson v. Quattlebaum, 132 Ark. 613, 201 S.W. 1113 (1918).

Rights-of-way 300 feet in width executed by landowners to drainage district for construction of a new levee, but which were not described by metes and bounds, did not include area of land ditch constructed 100 feet west of the right-of-way, as words "west of old levee" could not be extended to mean "and adjacent thereto." Drainage Dist. No. 16 v. Holly, 213 Ark. 889, 214 S.W.2d 224 (1948).

**Cited:** Greer v. Blocker, 218 Ark. 259, 236 S.W.2d 68 (1951); Cherry v. Cousart Bayou Drainage Dist., 222 Ark. 404, 259 S.W.2d 513 (1953).

# 14-121-202. Notice and hearing.

- (a) The county clerk shall thereupon give notice by publication for two (2) weeks in some newspaper published and having a general circulation in the county calling upon all persons owning property within the district to appear before the court on some day to be fixed by the court, to show cause in favor of or against the establishment of the district.
- (b) At the time named in the notice, the county court shall meet and hear all property owners within the proposed district who wish to appear and advocate or resist the establishment of the district. If the court deems it to the best interest of owners of real property within the district that the proposed district shall become a drainage district under the terms of this act, then it shall make an order upon its records establishing the same as a drainage district subject to all the terms and provisions of this act.

**History.** Acts 1909, No. 279, § 1, p. 829; 1911, No. 221, § 1; C. & M. Dig., § 3607; Acts 1921, No. 353, § 1; Pope's Dig; § 4455; Acts 1957, No. 327, § 1; A.S.A. 1947, § 21-501.

**Publisher's Notes.** Acts 1957, No. 327, § 6, provided that the act would be cumulative and would not repeal any then existing law and would not apply to any district already then organized. The section further provided that the act would not be deemed to take from any levee, drainage, or other improvement district the power or right the district then had to enter into and perform any contract or agreement of the United States Army Corps of Engineers or other federal agency.

Meaning of "this act". Acts 1911, No. 221, codified as §§ 14-121-102, 14-121-

201 — 14-121-205, 14-121-207, 14-121-301, and 14-121-304.

#### CASE NOTES

#### ANALYSIS

Jurisdiction.

-In general.

-Requirements.

—Sufficiency.

Order of court.

#### Jurisdiction.

Where a district is attempted to be organized, in order for the county court to acquire jurisdiction, it is necessary that the county court fix the date for the hearing before the publication of the notice to the property owners. Gibson v. Lower Running Water Drainage Dist., 127 Ark. 165, 191 S.W. 908 (1917).

Where proceedings looking to the organization of an improvement district are special and out of the course of the common law, no presumption can be indulged with respect to jurisdictional matters, and the question of jurisdiction may be inquired into either directly or collaterally. Gibson v. Lower Running Water Drainage Dist., 127 Ark. 165, 191 S.W. 908 (1917).

#### Notice.

#### -In General.

All persons are charged with knowledge of the amendatory acts to the general drainage laws, but landowners are not required to take notice of the proceedings to organize a drainage district until a notice is properly published. Drainage Dist. No. 7 v. Terry, 126 Ark. 518, 191 S.W. 8 (1917).

Notice of hearing on a proposed establishment of a district is jurisdictional, and no lands can be included in the district that are not included in the notice. Smith v. Lawrence, 175 Ark. 712, 300 S.W. 386 (1927).

#### -Requirements.

The notice of a petition for the formation of a drainage district must clearly and specifically declare that purpose so that one reading it may ascertain from it just what is intended without any extraneous matter or other source of information. Drainage Dist. No. 7 v. Terry, 126 Ark. 518, 191 S.W. 8 (1917).

In the organization of a drainage district, only one notice is required to be given preliminary to the organization of a district; that notice must be published by the circuit clerk after the report of the engineer appointed by the district has been filed, calling upon all landowners in the district to appear before the court to show cause for or against the creation of the district. Oates v. Cypress Creek Drainage Dist., 135 Ark. 149, 205 S.W. 293 (1918).

A description of the property to be embraced in the district is to be included in the notice published. Mahan v. Wilson, 169 Ark. 117, 273 S.W. 383 (1925).

#### -Sufficiency.

As to notices held insufficient, Drainage Dist. No. 7 v. Terry, 126 Ark. 518, 191 S.W. 8 (1917).

As to notices held sufficient, Burns v. Fisher, 171 Ark. 1012, 287 S.W. 205 (1926); Drainage Dist, No. 9 v. Merchants' & Planters' Bank, 176 Ark. 474, 2 S.W.2d 1079 (1928); Riley v. Eight Mile Drainage Dist., 223 Ark. 533, 267 S.W.2d 302 (1954).

Sufficiency of published notice to landowners may be raised on appeal, though not raised in trial court, since proper notice is jurisdictional. Riley v. Eight Mile Drainage Dist., 223 Ark. 533, 267 S.W.2d 302 (1954).

#### Order of Court.

The power lodged in the county court under this section, being very great, there should be no uncertainty about the advantage to the landowners before the court should order the establishment of the district, and any uncertainty must be resolved in favor of the landowners upon whom the burden of the improvement rests. Where the court's finding showed uncertainty, the county court will not be ordered to establish the district. Burton v. Chicago Mill & Lumber Co., 106 Ark. 296, 153 S.W. 114 (1913).

A petition for and order creating a drainage district need not state that the proceedings are under the alternative system where such fact appears from the complaint filed to enjoin further proceedings under the order. Robinson v. Mud Slough Drainage Dist., 174 Ark. 369, 295 S.W. 360 (1927).

Cited: Greer v. Blocker, 218 Ark. 259,

236 S.W.2d 68 (1951); Cherry v. Cousart Bayou Drainage Dist., 222 Ark. 404, 259 S.W.2d 513 (1953).

# 14-121-203. Land in more than one county.

(a) If land in more than one (1) county is embraced in the proposed district, the application shall be addressed to the circuit court in which the largest portion of the lands lie, and all proceedings shall be had in the circuit court.

(b) The circuit court shall apportion all costs between the county or

counties in proportion to the benefits assessed to each county.

(c) The expenses incurred prior to the time when the assessment is made shall be apportioned between the counties in the proportion which the circuit court shall deem to be just and equitable.

(d) All notices in that event shall be published in newspapers published and having bona fide circulation in each county in which the

district embraces lands.

(e) All of the districts shall be numbered consecutively or else shall receive names selected by the county court.

(f) If the county court does not act promptly in complying with the terms of any section of this act essential to the creation and operation

of the districts, it may be compelled to do so by mandamus.

(g) The domicile of the district shall be the county in which the largest portion of the lands in the district lie, and all suits against it shall be by service on all of the commissioners of the district.

**History.** Acts 1909, No. 279, § 1, p. 829; 1911, No. 221, § 1; C. & M. Dig., § 3607; Acts 1921, No. 353, § 1; Pope's Dig., § 4455; Acts 1957, No. 327, § 1; A.S.A. 1947, § 21-501.

Publisher's Notes. Acts 1957, No. 327, § 6, provided that the act would be cumulative and would not repeal any then existing law and would not apply to any district already then organized. The section further provided that the act would not be deemed to take from any levee, drainage, or other improvement district the power or right the district then had to enter into and perform any contract or agreement of the United States Army Corps of Engineers or other federal agency.

Meaning of "this act". See note to

§ 14-121-201.

#### **CASE NOTES**

#### Jurisdiction.

Where the lands proposed to be included in a drainage district lie in more than one county, jurisdiction to create the district is in the circuit court. Grassy Slough Drainage Dist. v. National Box Co., 111 Ark. 144, 163 S.W. 512 (1914); Bayou Meto Drainage Dist. v. Ingram, 165 Ark.

318, 264 S.W. 947 (1924); Grady Drainage Dist. v. Free, 178 Ark. 346, 10 S.W.2d 854 (1928).

**Cited:** Greer v. Blocker, 218 Ark. 259, 236 S.W.2d 68 (1951); Cherry v. Cousart Bayou Drainage Dist., 222 Ark. 404, 259 S.W.2d 513 (1953).

# 14-121-204. Signatures — Establishment when no petition is filed.

(a) If, upon hearing provided for in §§ 14-121-201 — 14-121-203, the petition is presented to the county court signed by a majority, either in numbers or in acreage or in value of the holders of real property within the proposed district, praying that the improvement be made, it shall be the duty of the county court to make the order establishing the district without further inquiry.

(b) If no petition is filed, it shall be the duty of the county court to investigate as provided in §§ 14-121-201 — 14-121-203 and to establish the district if it is of the opinion that the establishment thereof will be

to the advantage of the owners of real property therein.

(c) The petition provided for therein may be signed by guardians for their wards, and by trustees, executors, and administrators for the

estates represented by them.

(d) If the signature of any corporation thereto is attested by the corporate seal, the signature shall be sufficient evidence of the assent of the corporation to the petition.

**History.** Acts 1909, No. 279, § 2, p. § 3608; Pope's Dig., § 4456; A.S.A. 1947, 829; 1911, No. 221, § 2; C. & M. Dig., § 21-502.

#### CASE NOTES

#### Petitions.

Where the petition for the establishment of an improvement district does not have a majority of the signatures of landowners, either in number, acreage, or value, there should be no uncertainty about it being to the advantage of the landowners; and under such circumstances, an uncertainty should be resolved in favor of the owners of the property to be assessed upon whose shoulders the burden of the improvement will rest. Jacks Bayou Drainage Dist. v. St. Louis, I.M. & S. Ry., 116 Ark. 30, 171 S.W. 867 (1914).

The organization of a drainage district was not rendered invalid because a second

petition was not filed nor because, in making the final order establishing the district, the court excluded three sections of land embraced in the original petition. Jones v. Fletcher, 132 Ark. 328, 200 S.W. 1034 (1918).

Where a majority in acreage of the property owners in a drainage district sign a petition asking for the cleaning out of ditch, the district has right to purchase equipment to be used on the work. Halsell v. Drainage Dist. No. 17, 216 Ark. 746, 227 S.W.2d 136 (1950).

# 14-121-205. Effect of order establishing district — Appeal.

(a) The order of the county court establishing the district shall have

all of the force of a judgment.

(b) Any owner of real property within the district may appeal from the judgment within twenty (20) days after the judgment has been made, but if no appeal is taken within that time, the judgment shall be deemed conclusive and binding upon all the real property within the bounds of the district and upon the owners thereof. Any owner of property in the district may within a like time appeal from any order refusing to establish the district.

**History.** Acts 1909, No. 279, § 3, p. § 3609; Pope's Dig., § 4457; A.S.A. 1947, 829; 1911, No. 221, § 3; C. & M. Dig., § 21-503.

#### **CASE NOTES**

ANALYSIS

Constitutionality. Appeals. Jurisdiction.

Constitutionality.

This section affords due process of law. Dickerson v. Tri-County Drainage Dist., 138 Ark. 471, 212 S.W. 334 (1919).

Appeals.

Where landowner did not lodge the transcript in the circuit court for one year after the allowance of the appeal, it was within the discretion of the court to determine whether it would permit him to prosecute the appeal. Wulff v. Clabourne, 107 Ark. 325, 155 S.W. 497 (1913).

#### Jurisdiction.

Although the attempted organization of

a drainage district is void, the county court has no jurisdiction to grant relief by injunction to property owners against unlawful acts of the commissioners. Wilson v. Mattix, 149 Ark. 23, 231 S.W. 197 (1921).

Where original order establishing district was void because the description of the land described no land, the county court had jurisdiction to create a new district on a new petition in which the lands were correctly described although at the time of the latter order an appeal from the first order was pending. O'Kane v. McLean Bottom Levee & Drainage Dist. No. 3, 211 Ark. 938, 203 S.W.2d 392 (1947).

The county court is authorized to establish a drainage district. Walker v. Roland Drainage Dist., 212 Ark. 633, 207 S.W.2d 319 (1948).

# 14-121-206. Advancement of cases involving validity of organization.

All cases in which there arises a question of the validity of the organization of drainage districts shall be advanced as matters of public interest and heard in all courts at the earliest practicable moment.

**History.** Acts 1913, No. 177, § 12; C. & M. Dig., § 3644; Pope's Dig., § 4495; A.S.A. 1947, § 21-504.

# 14-121-207. Reorganization of districts formed under other laws.

Any district organized under the existing statutes may become a drainage district under the terms of this act as follows:

(1) If three (3) owners of real property within the district shall petition the county court to constitute them a drainage district under the terms hereof, the county court shall give notice of the application by two (2) weeks' publication in some newspaper published and having a bona fide circulation in the county, and of a time when the petition will be heard.

(2) All owners of real property within the district shall have the right

to appear and contest the petition or to support it.

(3) The county court shall hear the evidence and shall either grant the petition or deny it, as it deems most advantageous to the property owners of the district. If it grants the petition, the district shall have all the rights and powers and be subject to all the obligations provided by the terms of this act.

(4) However, if the majority of the landowners of the district or the owners of a majority of the acreage therein petition for the adoption of this act, the county court must make an order declaring that the district shall henceforth be governed by the terms of this act and shall appoint commissioners of his own selection, who shall carry into effect, without delay, the proposed drainage improvement.

(5) The provisions of this act and the act of which it is amendatory shall not apply to or in any way affect Drainage District No. 2 and Drainage District No. 5, both in Poinsett County, as originally organized in and by the county court of the county. The court shall proceed to carry out the proposed improvements as if this act and the act of which it is amendatory had never been passed or become a law.

**History.** Acts 1909, No. 279, § 34, p. 829; 1911, No. 54, § 1; 1911, No. 221, § 5; C. & M. Dig., § 3654; Pope's Dig., § 4505; A.S.A. 1947, § 21-567.

**Publisher's Notes.** The former law relating to drainage districts that was in

effect when Acts 1909, No. 279 was passed was Acts 1903, No. 159, which was repealed by Acts 1935, No. 60.

Meaning of "this act". See note to § 14-121-202.

### **CASE NOTES**

#### Circuit Court.

Where the lands lie in two counties, this section authorizes the filing of a petition in the circuit court to change a drainage

district formed under the older statutes. Grassy Slough Drainage Dist. v. National Box Co., 111 Ark. 144, 163 S.W. 512 (1914).

# 14-121-208. Making districts created by special act into districts governed by general law.

All drainage districts created by special acts are made drainage districts under Acts 1909, No. 279, with all the powers conferred by the latter and with all the liabilities and restrictions thereby imposed. However, nothing in this section shall be construed as taking away from any improvement district created by special acts any powers which are thereby conferred upon it, nor shall it displace any commissioners or directors of such districts now in office.

**History.** Acts 1927, No. 227, § 1; Pope's Dig., § 4519; A.S.A. 1947, § 21-568.

Publisher's Notes. Acts 1909, No. 279, referred to in this section, is codified as §§ 21-501 — 21-503, 21-505, 21-506, 21-

511 — 21-517, 21-523 — 21-528, 21-531 — 21-533, 21-542, 21-543, 21-546, 21-547, 21-549 — 21-551, 21-553 — 21-556, 21-564 — 21-567.

#### CASE NOTES

ANALYSIS

Constitutionality. Purpose. Applicability. Commissioners. Powers.

Constitutionality.

This section is an independent act and

is not void as extending the special act by reference, in violation of Ark. Const., Art. 5, § 23. Winton v. Bartlett, 181 Ark. 669, 27 S.W.2d 100 (1930).

Purpose.

This section was intended to provide a uniform system for the operation of all drainage districts. Berry v. Cousart Bayou Drainage Dist., 181 Ark. 974, 28 S.W.2d 1060 (1930).

Drainage districts created by special acts prior to 1926 retain all the powers under the special acts granted to them and also have all powers allowed to such districts under the general law of 1909, for this is the legislative intent expressed in this section. Campbell v. Beaver Bayou Drainage Dist., 215 Ark. 187, 219 S.W.2d 934, cert. denied, 338 U.S. 829, 70 S. Ct. 80, 94 L. Ed. 504 (1949).

Applicability.

This section made the general drainage district law applicable to the Cypress Creek Drainage District, and therefore office of commissioner was appointive under provisions of § 14-121-301. Meador v.

Warrington, 228 Ark. 297, 307 S.W.2d 75 (1957).

### Commissioners.

This section has the effect of bringing all drainage districts under the general law, which, among other things, requires appointment of the commissioners of drainage districts by the court, so that special act where individual held office was superseded by the general law. Meador v. Warrington, 228 Ark. 297, 307 S.W.2d 75 (1957).

#### Powers.

Where a drainage district created by a special act was changed to a district operating under the general statutes, it was no longer bound by the limitations prescribed by the special act and could construct a levee. Britt v. Laconia Circle Special Drainage Dist., 165 Ark. 92, 263 S.W. 48 (1924) (decision under prior law).

Cited: Cherry v. Cousart Bayou Drainage Dist., 222 Ark. 404, 259 S.W.2d 513 (1953); Price v. Drainage Dist. No. 17, 302 Ark. 64, 787 S.W.2d 660 (1990).

## SUBCHAPTER 3 — BOARD OF COMMISSIONERS

SECTION.

14-121-301. Members generally.

14-121-302. Members — Increase in number.

14-121-303. Members — District in more than one county.

14-121-304. Organization.

14-121-305. Powers and duties.

14-121-306. Authority to secure federal aid — Surveys.

14-121-307. Cooperation with the United States.

SECTION.

tend districts, borrow money, and issue bonds. 14-121-309. Deposit of funds — Bond.

14-121-310. Treasurer — Warrants. 14-121-311. Records and reports of finan-

cial transactions — Penalty.

14-121-312. Attorneys.

14-121-313. Liability.

14-121-314. Ratification of commissioners' acts.

Publisher's Notes. Acts 1939, No. 260, § 1, provides, in part, that where any drainage district in Arkansas is organized under any general or special act of the General Assembly provided for election of commissioners and, through error, the commissioners have not been elected but selected by some other method and the commissioners have taken the oath required by law and have served as commis-

14-121-308. Authority to improve or ex-

sioners in good faith, the acts of those commissioners are validated and shall have the same force and effect as though the commissioners had been selected in the manner provided by law.

Cross References. Certain boards of commissioners in drainage or levy districts, § 14-120-601 et seq.

Preambles. Acts 1969, No. 277 contained a preamble which read: "WHERE-

AS, prior to the adoption of Amendment 14 to the Constitution of the State of Arkansas, which prohibited the enactment of local or special legislation, the General Assembly had by special Acts created a number of drainage districts in this State: and

"WHEREAS, Act 227 of 1927 (Arkansas Statutes 21-568) provided that all drainage districts created by special legislative Acts were reconstituted as drainage districts under the provisions of Act 279 of

1909; and

"WHEREAS, Section 4 of Act 279 of 1909, as amended, (Arkansas Statutes 21-505), provides for the appointment of three (3) commissioners of drainage dis-

tricts effected by such Act; and

"WHEREAS, because of the establishment of a number of drainage districts by special Acts a number of vacancies have been created in drainage district boards and confusion has arisen with respect to the membership of such boards; and

"WHEREAS, it is believed that these matters should be clarified by the enactment of authority whereby a majority in value of the owners of real property in drainage district may provide for the increasing of the number of members on the Board of Commissioners of the drainage district from three (3) to five (5)..."

Effective Dates. Acts 1909, No. 279, § 35: effective on passage.

Acts 1913, No. 177, § 22: approved Mar. 13, 1913. Emergency declared.

Acts 1921, No. 353, § 3: effective on passage.

Acts 1927, No. 203, § 5: effective on

passage.

Acts 1955, No. 66, § 2: Feb. 17, 1955. Emergency clause provided: "Inasmuch as there are many drainage districts in the State whose levees, lands and crops are being washed away by flash floods; and which also suffer at times from drouths. and inasmuch as the Federal Government is assisting in the buildings of dams and reservoirs to impound the head waters causing same, and which dams also serve as a means of irrigating said lands during drouths; an emergency is hereby declared to exist, and being necessary for the public health and convenience and safety, this act will take immediate effect and be in force on and from the date of its passage and approval."

Acts 1957, No. 327, § 7: approved Mar.

27, 1957. Emergency clause provided: "It is hereby ascertained and declared that there are many projects which the U.S. Government might construct if an agency existed for the maintenance of such projects after construction, and that such projects would be of immense benefit to the citizens of this state and that the proper development of the state is being retarded because no agency can be created under the present laws of the state for the maintenance of such projects, and that an emergency exists and this act being necessary for the immediate promotion of public peace, health and safety, the same shall take effect and be in force from and after its passage."

Acts 1969, No. 27, § 3: Feb. 4, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the requirement that the board of commissioners of a drainage district retain 20% of the compensation for work done by a contractor until the contract is completed is unduly restrictive; that many drainage district boards have been retaining only 10% of the estimated work as construction has progressed rather than 20%: that there is immediate need for legislation to remove this unduly restrictive requirement in order that public contractors not be unduly oppressed by the greater amount of retainage, and in order that public works be bid at the lowest possible prices and completed as expeditiously as possible. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after the date of its passage and approval."

Acts 1969, No. 277, § 4: became law without Governor's signature, Mar. 18, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that considerable confusion exists with respect to the membership of a number of drainage districts which were established by special Acts of the General Assembly and that the immediate passage of this Act is necessary to establish procedures to clarify such confusion and to enable a majority in value of the owners of real property in a drainage district to provide for the increase of the Board of Commissioners from three (3) to five (5) members thereby improving and expediting the management of the affairs of such

district. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its

passage and approval."

Acts 1970 (Ex. Sess.), No. 61, § 4: Mar. 13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health, and safety, shall be in effect from and after its passage and approval."

Acts 1975, No. 225, § 26: became law without Governor's signature, Feb. 19, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this state and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate

effect of this act. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1995, No. 343, § 8: Feb. 16, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that Drainage Improvement Districts should be authorized to levy their assessments as a flat tax per acre; that the statutes do not specifically now authorize such; that such authority should be granted immediately; and this act will grant that authority. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

#### RESEARCH REFERENCES

**UALR L.J.** Goldner, A Call for Reform of Arkansas Municipal Law, 15 UALR L.J. 175.

# 14-121-301. Members generally.

- (a) When the county court has established any such drainage district, it shall appoint three (3) owners of real property within the county to act as commissioners.
- (b) Each of these commissioners shall take the oath of office required by Arkansas Constitution, Article 19, § 20, and shall also swear that he

will not directly or indirectly be interested in any contract made by the board and that he will well and truly assess all benefits resulting from the improvement and all damages caused thereby.

(c) Any commissioner failing to take the oath within thirty (30) days after his appointment shall be deemed to have declined, and his place shall be filled by the county court if in session, and if not, by the county

judge.

(d) All vacancies on the board shall be filled by the county court, or the county judge in vacation; but if a majority in value of the owners of real property in the district shall petition for the appointment of particular persons as commissioners, it shall be the duty of the county court or county judge to appoint the persons so designated.

(e)(1) The county court shall remove any member of the board on the petition of a majority in value of the owners of real property in the

district.

(2) The county court may remove any commissioner and appoint his successor upon proof of incompetency or neglect of duty, but the charges shall be in writing, and the commissioner shall have the right to be heard in his defense and to appeal to the circuit court.

(f) The commissioners provided for in this subchapter shall receive as compensation the sum of twenty-five dollars (\$25.00) each day for attending meetings of the board, together with their necessary ex-

penses.

**History.** Acts 1909, No. 279, §§ 4, 13, 18, p. 829; 1911, No. 221, § 4; C. & M. Dig., §§ 3610, 3621, 3626; Acts 1921, No.

353, § 2; Pope's Dig., §§ 4458, 4472, 4477; Acts 1969, No. 152, § 3; 1971, No. 95, § 1; A.S.A. 1947, §§ 21-505, 21-506, 21-523.

#### **CASE NOTES**

Analysis

Oath of office. Owners of real property. Special acts.

#### Oath of Office.

Oath of office taken by commissioners of levee and drainage district was in substantial, if not literal, compliance with this section and Ark. Const., Art. 19, § 20. O'Kane v. McLean Bottom Levee & Drainage Dist., 211 Ark. 938, 203 S.W.2d 392 (1947).

Where commissioner did not take oath after appointment, he was not a de jure officer although he did take oath after election, since commissioners of drainage districts do not take office by election. Meador v. Warrington, 228 Ark. 297, 307 S.W.2d 75 (1957).

#### Owners of Real Property.

This section provides that the commissioners shall be owners of real property

within the county; the fact they own land within the district does not disqualify them to act as commissioners. Less Land Co. v. Fender, 119 Ark. 20, 173 S.W. 407 (1915).

The commissioners of a drainage district lying in more than one county must be owners of real property within the district. Oates v. Cypress Creek Drainage Dist., 135 Ark. 149, 205 S.W. 293 (1918).

#### Special Acts.

The elective term of office of commissioner contemplated by the special act creating the Cypress Creek Drainage District has been superseded by the appointive power granted under this section by virtue of § 14-121-208. Meador v. Warrington, 228 Ark. 297, 307 S.W.2d 75 (1957).

Cited: Beaver Bayou Drainage Dist. v. Lee-Phillips Drainage Dist., 221 Ark. 550, 254 S.W.2d 465 (1953); Meador v. Warrington, 228 Ark. 297, 307 S.W.2d 75 (1957).

## 14-121-302. Members — Increase in number.

(a) Whenever a majority in value of the owners of real property in any drainage district in this state which was established pursuant to the provisions of special acts of the General Assembly, but which were, by the provisions of § 14-121-208, brought under the provisions of §§ 14-121-101, 14-121-102, 14-121-104, 14-121-105, 14-121-201 — 14-121-205, 14-121-207, 14-121-301, 14-121-304, 14-121-305, 14-121-307, 14-121-310, 14-121-311, 14-121-313, 14-121-401 - 14-121-406, 14-121-406408, 14-121-411, 14-121-412, 14-121-422 — 14-121-432, 14-121-440 — 14-121-442, 14-121-802 — 14-121-805, and 14-121-808 shall file petitions with the county court of the county in which the drainage district is located requesting that the membership of the board of commissioners of the drainage district shall be increased from three (3) to five (5) members, it shall be the duty of the county court to appoint, in the manner provided by law, two (2) additional owners of real property in the district as commissioners of the district. Thereafter, the total membership of the board of commissioners of the drainage district shall consist of five (5) members.

(b) Such additional members shall be appointed in the same manner and vacancies in any position shall be filled in the same manner as now

provided by law.

(c) All action by the board of commissioners of any drainage district affected by this section shall be a majority vote of the membership of the board of commissioners.

**History.** Acts 1969, No. 277, § 1; A.S.A. 1947, § 21-505.1.

# 14-121-303. Members — District in more than one county.

(a) In case of a district lying in more than one (1) county, three (3) commissioners shall be appointed, and in all cases the commissioners must be owners of real property within the district.

(b) However, where a district embraces lands in three (3) or more counties, the court may appoint as many commissioners as there are counties, but it shall be discretionary with the court whether he shall appoint a commissioner from each county.

**History.** Acts 1913, No. 177, § 6; C. & M. Dig., § 3639; Pope's Dig., § 4490; Acts 1957, No. 327, § 2; A.S.A. 1947, § 21-508.

Publisher's Notes. Acts 1957, No. 327, § 6, provided that the act would be cumulative and would not repeal any then existing law and would not apply to any district already then organized. The section further provided that the act would not be deemed to take from any levee, drainage, or other improvement district the power or right the district then had to enter into and perform any contract or agreement of the United States Army Corps of Engineers or other federal agency.

#### CASE NOTES

Owners of Real Property.

The commissioners of a drainage district lying in more than one county must

be owners of real property within the district. Oates v. Cypress Creek Drainage Dist., 135 Ark. 149, 205 S.W. 293 (1918).

# 14-121-304. Organization.

The board shall select one (1) of their number as chairman, and a majority shall constitute a quorum.

**History.** Acts 1909, No. 279, § 4, p. 829; 1911, No. 221, § 4, p. 193; C. & M. Dig., § 3610; Acts 1921, No. 353, § 2;

Pope's Dig., § 4458; A.S.A. 1947, § 21-505.

#### CASE NOTES

Cited: Beaver Bayou Drainage Dist. v. Lee-Phillips Drainage Dist., 221 Ark. 550, 254 S.W.2d 465 (1953); Meador v.

Warrington, 228 Ark. 297, 307 S.W.2d 75 (1957).

### 14-121-305. Powers and duties.

(a) The boards of commissioners mentioned in this chapter shall have control of the construction of the improvements in their districts.

(b)(1) A board may advertise in local papers or papers published in

other states for proposals for doing any work by contract.

(2) No work exceeding ten thousand dollars (\$10,000) shall be let without public advertisement.

(3) A board may accept or reject any proposals.

(c) A board may:

(1) Appoint all necessary agents for carrying on the work and fix their pay;

(2) Buy all necessary material and implements;

(3) Sell material or implements on hand which may not be necessary for the completion of the improvement; and

(4) Make all such contracts in the prosecution of the work as may

best subserve the public interest.

(d) It shall be the duty of a board to have the amount of work done by any contractor estimated, from time to time as may be desirable, by the engineer selected by the board. The board shall draw its warrants in favor of the contractor for not more than ninety percent (90%) of the amount of work so reported, reserving the remainder until it has been ascertained that the work has been completed according to contract and is free from liens.

**History.** Acts 1909, No. 279, §§ 13, 14, p. 829; C. & M. Dig., §§ 3621, 3622; Pope's Dig., §§ 4472, 4473; Acts 1969, No. 27, § 1; 1969, No. 152, § 3; A.S.A. 1947, §§ 21-523, 21-524; Acts 1987, No. 79, § 1; 1995, No. 343, § 1.

Amendments. The 1995 amendment substituted "ten thousand dollars (\$10,000)" for "five thousand dollars (\$5,000)" in (b)(2).

#### **CASE NOTES**

ANALYSIS

In general. Employment of engineers. Liability.

#### In General.

Commissioners must proceed in the regular manner prescribed by statute without any conduct on their part, intentional or otherwise, which is calculated to deceive or mislead property owners to their detriment. Protho v. Williams, 147 Ark. 535, 229 S.W. 38 (1921).

**Employment of Engineers.** 

The commissioners of a drainage dis-

trict have authority to employ and pay engineers. Wallace v. McCartney, 159 Ark. 617, 252 S.W. 600 (1923).

### Liability.

The commissioners of a district are exempted from liability for damages resulting to a landowner from faulty or improper construction of the improvement. Wood v. Drainage Dist., 110 Ark. 416, 161 S.W. 1057 (1913).

**Cited:** Meador v. Warrington, 228 Ark. 297, 307 S.W.2d 75 (1957).

## 14-121-306. Authority to secure federal aid — Surveys.

All drainage districts in the State of Arkansas, whether created by special act or otherwise, are authorized, when considered practicable by the board of commissioners or directors of any such district, to make any necessary surveys for the securing of federal aid and assistance in the construction of dams and reservoirs for impounding of head waters which cause floods that overflow the ditches, wash away the levees and crops, and erode the lands in the district.

**History.** Acts 1955, No. 66, § 1; A.S.A. 1947, § 21-585.

# 14-121-307. Cooperation with the United States.

(a) If improvements are undertaken in cooperation with the United States, the board may enter into an agreement providing for the construction of the works of improvement and awarding of contracts therefor, to be by, and under the control and supervision of, the United States or any agency or instrumentality thereof.

(b) In that event, the advertisement, award, and carrying out of the contracts shall be in accordance with the provisions of law applicable to the federal agency.

**History.** Acts 1909, No. 279, § 13; C. & M. Dig., § 3621; Pope's Dig., § 4472; Acts 1969, No. 152, § 3; A.S.A. 1947, § 21-523.

Cross References. Agreements with United States authorized, §§ 14-120-216, 14-120-217.

#### CASE NOTES

**Cited:** Meador v. Warrington, 228 Ark. 297, 307 S.W.2d 75 (1957).

# 14-121-308. Authority to improve or extend districts, borrow money, and issue bonds.

(a) The commissioners of any drainage district organized under the provisions of §§ 14-121-101-14-121-104, 14-121-201-14-121-207, 14-121-301, 14-121-303-14-121-305, 14-121-307, 14-121-309-14-121-314, 14-121-401-14-121-406, 14-121-408, 14-121-411, 14-121-412, 14-121-420-14-121-424, 14-121-425 (a), (b), 14-121-426-14-121-433, 14-121-440-14-121-442, 14-121-501, 14-121-502, 14-121-802-14-121-808, and 14-121-810 shall have the power as hereinafter provided, either before or after the completion of the plans for the work therein, to deepen or widen the drains in the district and to build additional laterals for the better drainage of its lands, and to borrow money for that purpose.

(b) To that end, they shall have power to issue negotiable bonds bearing a rate or rates of interest as provided in the resolution of the commissioners authorizing their issuance for the purpose of securing funds with which to complete the work of improvement in the district, and of widening or deepening the ditches, adding laterals, and for

maintenance of the ditches and levees.

(c) They may secure the payment of the bonds by a pledge and a mortgage of the assessment of the benefits in the district, and of all reassessments thereof.

**History.** Acts 1927, No. 203, § 1; No. 61, § 1; 1975, No. 225, § 9; 1981, No. Pope's Dig., § 4526; Acts 1970 (Ex. Sess.), 425, § 9; A.S.A. 1947, § 21-518.

#### CASE NOTES

#### New Plans.

Commissioners of drainage district do not have to file new plans if residuary betterments are for purpose of maintenance of original construction, but if assessments are for expansion or structural enlargements not contemplated by original proceedings, then plans for additional undertakings must be filed. Owen v. Central Clay Drainage Dist., 216 Ark. 159, 224 S.W.2d 529 (1949).

Petition filed by commissioners asking permission to charge betterments with a one per cent annual levy to preserve levee without necessity of filing additional plans was granted, as levee was an integral part of the drainage district. Owen v. Central Clay Drainage Dist., 216 Ark. 159, 224 S.W.2d 529 (1949).

**Cited:** Walker v. Roland Drainage Dist., 212 Ark. 633, 207 S.W.2d 319 (1948).

# 14-121-309. Deposit of funds - Bond.

(a) If the commissioners deem best, they shall deposit the funds of the district in a solvent bank which will pay interest at not less than three percent (3%) nor exceeding four percent (4%) and shall give a good bond, conditioned that the funds shall be safely kept and paid out in accordance with the law.

(b) The order shall relieve the treasurer and his bondsmen from liability for loss of the funds through the insolvency of the bank and its bondsmen, and no commission shall be paid the treasurer on sums so

deposited. The bank shall pay out the funds only on warrants drawn upon it as prescribed for funds in the hands of the treasurer.

History. Acts 1913, No. 177, § 17; C. & Cross References. Penalty for failing M. Dig., § 3649; Pope's Dig., § 4500; to require bond, § 14-86-1801. A.S.A. 1947, § 21-552.

#### **CASE NOTES**

#### Treasurer's Commissions.

The treasurer of a county is not entitled to any commissions on sums deposited with him by the county collector, but which the commissioners of the district had deposited in a bank. Brown v. Epperson, 148 Ark. 62, 228 S.W. 1048 (1921).

## 14-121-310. Treasurer — Warrants.

(a) The treasurer shall:

(1) Pay out no money, save upon the order of the board and upon a warrant signed by the chairman of the board;

(2) Be allowed a commission not exceeding one percent (1%) upon all

sums lawfully paid out, to be fixed by the board; and

(3) Give special bond in a sum to be fixed by the county court as treasurer of each drainage district.

(b)(1) Every warrant shall state upon its face to whom, the amount,

and the purpose for which it is issued.

(2) All warrants shall be dated and numbered consecutively. A record shall be kept by the board of the number and amount of each warrant.

(3) No warrant shall be paid unless there is in the treasury funds

enough to pay all outstanding warrants bearing a lower number.

(4) No warrant shall be increased by reason of any depreciation in the market value thereof, nor shall any contract or warrant be made payable or paid in anything but currency.

**History.** Acts 1909, No. 279, § 11, p. 829; C. & M. Dig., § 3619; Pope's Dig., § 4470; A.S.A. 1947, § 21-551.

# 14-121-311. Records and reports of financial transactions — Penalty.

(a) The commission shall also keep the original itemized bills and accounts of all financial transactions and all warrants which have been paid. Each warrant shall state on its face the service for which it was rendered, the person to whom paid, and the amount of the warrant.

(b)(1) On or before January 1 of each year, the commission shall file with the county clerk a sworn statement of the financial condition of the

district, to cover the year ending on November 1 preceding.

(2) The report shall contain, among other things:

(A) A statement of the cash on hand January 1 of the year for which the report is made, together with all other assets of the district;

(B) The total receipts for the preceding year; and

- (C) The disbursements for administration, for construction, and for maintenance of bonds redeemed, of interest paid, and of interest due on outstanding bonds, together with all other indebtedness of the district.
- (c)(1) In districts with revenues, from whatever source derived, in excess of five thousand dollars (\$5,000) per year, the books, records, and last annual report of the district shall be examined at least one (1) time a year by a certified public accountant.

(2) The accountant shall file a report of the examination with the county court within thirty (30) days after completing the examination.

(3) The accountant shall recommend the form and methods for keeping books and records and for making the reports of the district.

(4) The expense of the examination shall be paid as a part of the district's expenses.

(d) All accounts of this district shall be open for inspection by any person lawfully entitled to inspect them.

(e)(1) The failure of any of the officials named in this section to perform the duties and acts required herein shall be a misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense.

(2) For the making of a false or fraudulent report, the person or persons so making shall be guilty of perjury and punished accordingly.

**History.** Acts 1909, No. 279, § 30, p. 829; C. & M. Dig., § 3637; Pope's Dig., § 4487; A.S.A. 1947, § 21-556; Acts 1987, No. 472, § 3.

**Publisher's Notes.** Acts 1987, No. 472, § 1, provided that there are many small

levee and drainage districts and improvement project areas of conservation districts with revenues of \$5,000 per year or less; under current law, the costs of formal audits have become a burden to the small districts and should be removed.

#### CASE NOTES

ANALYSIS

In general.
Jurisdiction in equity.

#### In General.

The statutory procedure provided by this section is administrative rather than judicial. Keenan v. Williams, 225 Ark. 556, 283 S.W.2d 688 (1955).

### Jurisdiction in Equity.

A court of equity has jurisdiction to prevent the misapplication of improvement district funds, and this section does not have the effect of depriving such court of that jurisdiction. Keenan v. Williams, 225 Ark. 556, 283 S.W.2d 688 (1955).

# 14-121-312. Attorneys.

The commissioners of drainage districts appointed under § 14-121-301 shall have power to employ attorneys as needed by the district and to fix their compensation.

**History.** Acts 1913, No. 177, § 13; C. & M. Dig., § 3645; Pope's Dig., § 4496; A.S.A. 1947, § 21-507.

### CASE NOTES

#### Power of Commissioners.

This section does not empower the commissioners to compel attorneys to represent the district or to fix arbitrarily their fees after they are employed. Bayou Meto Drainage Dist. v. Chapline, 143 Ark. 446, 220 S.W. 807 (1920).

## 14-121-313. Liability.

No member of any board of improvement shall be liable for any damages sustained by anyone in the prosecution of the work under his charge unless it shall be made to appear that he has acted with a corrupt and malicious intent.

**History.** Acts 1909, No. 279, § 16, p. 829; C. & M. Dig., § 3624; Pope's Dig., § 4475; A.S.A. 1947, § 21-526.

## 14-121-314. Ratification of commissioners' acts.

The property owners in a drainage district may:

- (1) Consent to waive the right to resort to courts and may absolutely ratify and confirm what has been done by the board of commissioners and all other officials with reference to the district; and
- (2) Thereafter, be forever barred from testing or contesting in any way the validity of the proceedings up to that time, the assessments made or the tax levied for the payment of principal and interest of bonds, or for any other purpose.

**History.** Acts 1913, No. 177, § 8; C. & M. Dig., § 3641; Pope's Dig., § 4492; A.S.A. 1947, § 21-562.

#### CASE NOTES

ANALYSIS

Contracts.
Delays.
Irregularities.

#### Contracts.

If landowners execute easement contracts to federal government for construction of levee, they are forever barred from contesting any of the proceedings up to the date of the execution of the contracts, including organization of district and assessments made by the commission. Harris v. Blackburn, 215 Ark. 195, 219 S.W.2d 922 (1949).

#### Delays.

Delay of 14 years while waiting for federal government aid in construction of levee was not "piecemeal construction" so as to prejudice rights of landowners where evidence showed that 14-year period was groping period impliedly consented to by the landowners. Harris v. Blackburn, 215 Ark. 195, 219 S.W.2d 922 (1949).

#### Irregularities.

Where there was a variance between an order of the court creating a drainage district and the published notice thereof in that a certain tract of land was substituted in the notice for one contained in the order, all of the property owners in the proposed district could consent to waive the irregularity, but a waiver by the owner of two tracts was insufficient. Lane v. Cook, 135 Ark. 528, 205 S.W. 887 (1918).

## Subchapter 4 — District Operation Generally

SECTION.	SECTION.
14-121-401. Plans for improvements.	Validation of prior levies.
14-121-402. Assessment of benefits and damages within district.	14-121-423. Validity of assessment or levy when error appears in
14-121-403. Assessment of lands outside of district — Hearing — Extension of boundaries.	description, etc.  14-121-424. Insufficiency of tax — Additional levy.
14-121-404. Filing the assessment — Notice.	14-121-425. Collection of taxes generally — Extension on county tax
14-121-405. Hearing on complaints —	books.
Appeal. 14-121-406. Acquiescence to assessment	14-121-426. Time for payment of tax — Delinquency.
or failure to assess — Effect of demand for assess-	14-121-427. Notice of proceedings for collection of taxes.
ment.	14-121-428. Trial date - Suit by bond-
14-121-407. Reassessment of benefits —	holder.
Appeals.	14-121-429. Trial procedure.
14-121-408. Alteration of plans — Reas-	14-121-430. Sale of land.
sessment.	14-121-431. Attorney's fees.
14-121-409. Petition that improvements	14-121-432. Redemption.
and extensions proceed	14-121-433. Land subject to improvement
under revised plans — No-	district tax lien — Sale
tice, hearing, and appeal.	and resale.
14-121-410. Effect of reassessment.	14-121-434 — 14-121-439. [Reserved.]
14-121-411. Benefits to lands in other dis-	14-121-440. Bonds — Prohibitions.
tricts — Assessments.	14-121-441. Issuing bonds and evidences
14-121-412. District continuance — Additional levy.	of debt to hasten work — Terms of bonds.
14-121-413 — 14-121-419. [Reserved.]	14-121-442. Security for bonds — Levy
14-121-420. Payment of assessments in drainage districts — Inter-	and collection of tax — Default in payment of bonds.
est.	14-121-443. Tax to pay off bonds issued
14-121-421. Payment of assessments in	for preliminary expenses.
improvement districts — Interest.	14-121-444. Issuance of certificates of in- debtedness for mainte-
14-121-422. Procedure for levy of tax —	nance — Appeal.
Preliminary expenses —	14-121-445. Refunding bonds.

Effective Dates. Acts 1909, No. 279, § 35: effective on passage.

Acts 1911, No. 136, § 2: approved Mar. 28, 1911. Emergency declared.

Acts 1913, No. 177, § 22: approved Mar.

13, 1913. Emergency declared.
 Acts 1919, No. 467, § 2: approved Mar.

Acts 1919, No. 467, § 2: approved Mar 28, 1919. Emergency declared.

Acts 1923, No. 562, § 4: approved Mar. 22, 1923. Emergency clause provided: "All laws and parts of laws in conflict with this act are hereby repealed; and this act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared, and it shall

take effect and be in force from and after its passage."

Acts 1927, No. 59, § 4: approved Feb. 24, 1927. Emergency clause provided: "And it appearing that a number of drainage districts in the State of Arkansas have issued bonds to pay the costs of preliminary expenses, and that such districts are likely to be forced into liquidation and dissolution unless immediate legislative relief is granted, thereby preventing the making of improvements essential to the public health, an emergency is hereby declared to exist, and it is declared that this act is necessary for the immediate preservation of the public health, and that

the same shall take effect and be in force from and after its passage."

Acts 1927, No. 203, § 5: effective on

Acts 1937, No. 350, § 3: effective on passage.

Acts 1939, No. 50, § 3: effective on pas-

Acts 1939, No. 163, § 4: approved Feb. 28, 1939. Emergency clause provided: "This act being necessary for the immediate preservation of the public health and security, an emergency is hereby declared, and this act shall be in force and effect from and after its passage."

Acts 1941, No. 285, § 2: effective on

passage.

Acts 1945, No. 180, § 3: effective on

passage.

Acts 1949, No. 28, § 2: approved Feb. 1, Emergency clause provided: "Whereas the ditches and improvements of drainage districts within the State are deteriorating for lack of proper care and maintenance, and whereas statutes now in force require that hearings on the levying of maintenance taxes to be held at regular court terms only, thereby causing serious and prolonged delay to the detriment of the drainage systems, this Act is necessary for the immediate preservation of the public peace, health and safety, and an emergency is hereby declared to exist. This Act shall, therefore, take effect and be in force from and after its passage."

Acts 1951, No. 72, § 4: approved Feb. 9, 1951. Emergency clause provided: "Because many of the ditches and improvements in drainage districts in this State are deteriorating for lack of necessary maintenance and maintenance work could be done at a great saving to the property owners if necessary work could be done before the collection of the annual maintenance taxes, this Act is necessary for the immediate preservation of the public peace, health, and safety, and an emergency is hereby declared to exist. This Act shall, therefore, take effect and be in force from and after its passage."

Acts 1957, No. 327, § 7: approved Mar. 27, 1957. Emergency clause provided: "It is hereby ascertained and declared that there are many projects which the U.S. Government might construct if an agency existed for the maintenance of such projects after construction, and that such projects would be of immense benefit to

the citizens of this state and that the proper development of the state is being retarded because no agency can be created under the present laws of the state for the maintenance of such projects, and that an emergency exists and this act being necessary for the immediate promotion of public peace, health and safety the same shall take effect and be in force from and

after its passage."

Acts 1970 (Ex. Sess.), No. 49, § 4: Mar. 13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health, and safety, shall be in effect from and after its passage and approval."

Acts 1975, No. 225, § 26: became law without Governor's signature, Feb. 19, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this state and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this act. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1995, No. 343, § 8: Feb. 16, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that Drainage Improvement Districts should be authorized to levy their assessments as a flat tax per acre; that the statutes do not specifically now authorize such; that such authority should be granted immediately; and this act will grant that authority. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

# 14-121-401. Plans for improvements.

(a) As soon as the board shall have formed its plans for improvements and shall have ascertained the cost thereof, it shall file the plans with the county clerk.

(b) The plans shall be accompanied by:

(1) A map showing the location of all main and lateral ditches; and

(2) Specifications fully describing the character of the improvements to be made, the width and depth of the ditches, the probable quantity of earth to be removed, and all other work to be done.

**History.** Acts 1909, No. 279, § 6, p. 829; C. & M. Dig., § 3612; Pope's Dig., § 4660; A.S.A. 1947, § 21-512.

#### **CASE NOTES**

Delays.

Commissioners had power to delay construction of pumping plant under plan calling for construction of levee, additional drainage, and pumping plant. Clements v. Bronaugh, 218 Ark. 783, 239

S.W.2d 1 (1951), cert. denied, 342 U.S. 866, 72 S. Ct. 106, 96 L. Ed. 651 (1951).

Cited: Kersh Lake Drainage Dist. v. State Bank & Trust Co., 85 F.2d 643 (8th Cir. 1936).

# 14-121-402. Assessment of benefits and damages within district.

(a)(1) The commissioners shall proceed to assess the lands within the district and shall inscribe in a book the description of each tract of land. They shall assess the value of the benefits to accrue to each tract by reason of the improvement and shall enter such assessment of benefits opposite the description, together with an estimate of what the landowner will probably have to pay on the assessment.

(2) These assessments shall embrace not merely the land but all public and corporate roads, railroads, tramroads, and other improvements on lands that shall be benefited by the drainage system.

(3) They shall place opposite each tract of land the name of the supposed owner, as shown by the last county assessment, but a mistake

in the name shall not vitiate the assessment. They may correct evident

errors which occur in the county assessment list.

(b) If any commissioner or any private corporation or other drainage district has dug ditches or made drainage works that can be profitably used as a part of the general system, the value of the ditches or drainage works to the district shall be assessed by the commissioners, shall separately appear upon their assessment, and shall be paid for by the district, either in cash or by reduction of assessment.

(c)(1) The commissioners shall also assess all damages that will accrue to any landowner by reason of the proposed improvement,

including all injury to lands taken or damaged.

- (2) Where they return no such assessment of damages as to any tract of land, it shall be deemed a finding by them that no damage shall be sustained.
- (3) Whenever the district embraces land in more than one (1) county, the secretary of the board of commissioners shall forward to the county clerk of each county in which the lands of the district lie a copy of the assessment of benefits insofar as relates to the lands in that county. The copy shall be preserved by the respective county clerks as permanent records of their offices.

**History.** Acts 1909, No. 279, § 7, p. 829; 1913, No. 177, § 1; C. & M. Dig., § 3613; Pope's Dig., § 4461; Acts 1957, No. 327, § 3; A.S.A. 1947, § 21-513.

Publisher's Notes. Acts 1957, No. 327, § 6, provided that the act would be cumulative and would not repeal any then existing law and would not apply to any district already then organized. The section further provided that the act would not be deemed to take from any levee, drainage, or other improvement district the power or right the district then had to enter into and perform any contract or agreement of the United States Army Corps of Engineers or other federal agency.

#### CASE NOTES

#### ANALYSIS

Benefit assessment.

-In general.

-Public roads.

-Railroads.

Collateral attack.

#### Benefit Assessment.

#### -In General.

The amount of benefit which an improvement will confer upon particular land and whether it is benefited at all is a matter of forecast and estimate. Oates v. Cypress Creek Drainage Dist., 135 Ark. 149, 205 S.W. 293 (1918).

All the elements of betterment need not be expressly shown on the drainage district benefit assessments, so long as reasonable men, with the essential information, conclude that the undertaking would especially benefit the whole district, and the methods of assessing the benefits to the property do not show on its face that the assessments were arbitrary and discriminatory. Lessenberry v. Little Rock-Pulaski Drainage Dist., 211 Ark. 1046, 204 S.W.2d 554 (1947).

The drainage commissioners who adopt the appraisers' report on benefit assessment are presumed to have been in possession of information necessary to determine whether the methods used were fair and the result uniform within the scope of due process. Lessenberry v. Little Rock-Pulaski Drainage Dist., 211 Ark. 1046, 204 S.W.2d 554 (1947).

#### -Public Roads.

This section does not authorize an assessment of benefits against county roads. Board of Comm'rs v. Arkansas County, 179 Ark. 91, 14 S.W.2d 226 (1929).

#### -Railroads.

It was proper in assessing the property of a railroad company within the district to make a total assessment of the entire benefit to the whole property of the railway company within the district. Oates v. Cypress Creek Drainage Dist., 135 Ark. 149, 205 S.W. 293 (1918).

#### Collateral Attack.

A collateral attack upon an assessment of benefits which has become final because of the failure to attack it within the time and manner provided by law will not lie unless the assessment is void on its face, and the rule applies to districts formed under general laws as well as those formed under special acts. Main v. Drainage Dist. No. 2, 204 Ark. 506, 162 S.W.2d 901 (1942).

# 14-121-403. Assessment of lands outside of district — Hearing — Extension of boundaries.

- (a) If the commissioners find that other lands not embraced within the boundaries of the district will be affected by the proposed improvement, they shall assess the estimated benefits and damages to the land and shall specially report to the county court the assessment which they have made on the lands beyond the boundaries of the district as already established.
- (b) It shall then be the duty of the county court to give notice in a newspaper published in the county where the lands lie, describing the additional lands which have been assessed.
- (c) The owners of real property so assessed shall be allowed twenty (20) days after the publication of the notice to file with the county clerk their protest against being included within the district.
- (d) The county court shall, at its next session, investigate the question of whether the lands beyond the boundaries of the district so assessed by the commissioners will in fact be benefited or damaged by the making of the improvement.
- (e) From its finding in that regard, either the property owners affected by the assessment or the commissioners of the district may appeal to the circuit court within twenty (20) days.
- (f) If the finding is in favor of the commissioners, the limits of the district shall be extended so as to embrace any lands that may be affected by the making of the improvement.

**History.** Acts 1909, No. 279, § 7, p. 829; 1913, No. 177, § 1; C. & M. Dig., § 3614; Pope's Dig., § 4462; A.S.A. 1947, § 21-514.

Cross References. Assessments not to

be reduced after issuance of bonds, § 14-86-602.

Right of review of assessment by chancery court, § 14-120-501.

#### **CASE NOTES**

ANALYSIS

Proposed improvements.

Irregularities. Municipalities. Irregularities.

Where lands in one township were not

included in drainage district when formed but were treated as being therein and assessment of benefits was made, failure to comply with statutory procedure was held cured by legislation approved after county clerk had received from the commissioners the assessment rolls which included lands of the township. Miller v. Cache River Drainage Dist., 205 Ark. 618, 170 S.W.2d 371 (1943).

Municipalities.

Rural property owners in forming drainage district for purpose of controlling flood waters in area were not prohibited by provisions of Ark. Const., Art. 19, § 27,

from including greater part of city in district even though consent of property owners in city was not obtained. Curlin v. Harding Drain Imp. Dist., 221 Ark. 412, 253 S.W.2d 345 (1952).

**Proposed Improvements.** 

A drainage district may not add lands after the improvements have been completed on the basis that the lands to be added benefit from the improvements, as the improvement is no longer "proposed" but has been completed. Williams v. Village Creek, White River & Mayberry Levee & Drainage Dist., 285 Ark. 194, 685 S.W.2d 797 (1985).

## 14-121-404. Filing the assessment — Notice.

(a) When their assessment is completed, the commissioners shall subscribe the assessment and deposit it with the county clerk, where it shall be kept and preserved as a public record.

(b) Upon the filing of the assessment, the county clerk shall give notice of the fact by publication for two (2) weeks in some newspaper issued in each of the counties in which the lands of the district may lie.

(c) The notice shall give a description of the lands assessed for drainage purposes in the district, so that the owners of the lands, if they desire, may appear before the county court on a certain day, naming the day and present complaints, if they have any, against the assessment of any lands in the district.

**History.** Acts 1909, No. 279, § 7, p. 829; 1913, No. 177, § 1; C. & M. Dig.,

§ 3615; Acts 1925, No. 124, § 3; Pope's Dig., § 4463; A.S.A. 1947, § 21-515.

#### CASE NOTES

ANALYSIS

Jurisdictional requirement. Publication.

Jurisdictional Requirement.

The requirements of this section are jurisdictional, and compliance is necessary. Drainage Dist. No. 9 v. Merchants' & Planters' Bank, 176 Ark. 474, 2 S.W.2d 1079 (1928).

#### Publication.

This section is complied with by publishing the notice once a week for two weeks in a daily newspaper. Johnson v. Tucker Lake Levee & Drainage Dist., 168

Ark. 889, 271 S.W. 965 (1925).

Notices of the organization of a drainage district and of assessment of benefits therein which were printed on presses located across the state line but brought into a town within the county and bearing the name of such town and county and distributed therefrom in the first instance were a sufficient compliance with this section. Drainage Dist. No. 9 v. Merchants' & Planters' Bank, 176 Ark. 474, 2 S.W.2d 1079 (1928).

Cited: Beaver Bayou Drainage Dist. v. Lee-Phillips Drainage Dist., 221 Ark. 550, 254 S.W.2d 465 (1953).

# 14-121-405. Hearing on complaints — Appeal.

- (a) Any owner of real property within the district who perceives himself to be aggrieved by the assessment of benefits or damages or deems that the assessment of any land in the district is inadequate shall present his complaint to the county court at the first regular, adjourned, or special session held more than ten (10) days after the publication of the notice.
- (b) The court shall consider the complaint and enter its finding thereon, either confirming the assessment or increasing or diminishing the assessment.
- (c) The court's finding shall have the force and effect of a judgment, from which an appeal may be taken within twenty (20) days, either by the property owners or by the commissioners of the district.

**History.** Acts 1909, No. 279, § 7, p. § 3615; Acts 1925, No. 124, § 3; Pope's 829; 1913, No. 177, § 1; C. & M. Dig., Dig., § 4463; A.S.A. 1947, § 21-515.

#### **CASE NOTES**

ANALYSIS

Constitutionality.
Finding of court.
Jurisdictional requirements.

Constitutionality.

This section does not constitute a denial of the constitutional right of appeal. St. Louis, I.M. & S.R.R. v. Maple Slough Drainage Dist., 138 Ark. 131, 211 S.W. 168 (1919).

Finding of Court.

Assessment of benefits upon land in drainage district, confirmed by the county court, constitutes a valid lien. Caldwell v. Scott, 195 Ark. 467, 112 S.W.2d 978 (1938).

Where commissioners acted under legal authority from the courts, their acts in making of assessments and improvements will not be set aside by a court of equity unless there is evidence of actual fraud on the part of the commission. Harris v. Blackburn, 215 Ark. 195, 219 S.W.2d 922 (1949).

## Jurisdictional Requirements.

The requirements of this section are jurisdictional and compliance is necessary. Drainage Dist. No. 9 v. Merchants' & Planters' Bank, 176 Ark. 474, 2 S.W.2d 1079 (1928).

The county court has exclusive original jurisdiction to pass upon the assessment of benefits and damages and to levy the tax for the payment of the improvements made in the district and when it refuses to do so the remedy to compel it to exercise its discretion is by mandamus, and where county court, upon landowner's application, improperly dissolved drainage district, circuit court's refusal to try de novo question of assessments of benefits and levy for collection of tax and issuance of writ of mandamus was held proper. Roberts v. Baucum Drainage Dist., 198 Ark. 964, 132 S.W.2d 184 (1939).

Cited: Beaver Bayou Drainage Dist. v. Lee-Phillips Drainage Dist., 221 Ark. 550, 254 S.W.2d 465 (1953).

# 14-121-406. Acquiescence to assessment or failure to assess— Effect of demand for assessment.

(a) Any property owner may accept the assessment of damages in his favor made by the commissioners or acquiesce in their failure to assess damages in his favor. He shall be construed to have done so unless he gives to the commissioners, within thirty (30) days after the assessment

is filed, notice in writing that he demands an assessment of his

damages by a jury.

(b) In that event, the commissioners shall institute in the circuit court of the proper county an action to condemn the lands that must be taken or damaged in the making of the improvement. This action shall be in accordance with the proceedings for condemnation of rights-of-way by railroad, telegraph, and telephone companies, with the same right of paying into court a sum to be fixed by the circuit court or judge, and proceeding with the work before assessment by the jury.

(c) If there is more than one (1) claimant to the lands, all claimants may be made parties defendant in the suit, and the fund paid into court, leaving the claimants to contest in that action their respective rights to

the fund.

**History.** Acts 1909, No. 279, § 8, p. 829; C. & M. Dig., § 3616; Pope's Dig., § 4464; A.S.A. 1947, § 21-516.

Cross References. Condemnation of

rights-of-way by railroad, telegraph, and telephone companies, § 18-15-1201 et seq.

#### CASE NOTES

ANALYSIS

Delay in construction. Jury.

Delay in Construction.

Where drainage district was organized according to law and assessments against landowners were made pursuant to court orders, landowners could not attack court orders after 14 years' delay in construction of levee when they failed to object to assessments at the time the assessments were made and delay was solicited and

approved by landowners. Harris v. Blackburn, 215 Ark. 195, 219 S.W.2d 922 (1949).

### Jury.

The guarantee of a jury trial in condemnation proceedings, in Ark. Const., Art. 12, § 9, applies to condemnation proceeding by private corporations and not to a proceeding by a drainage district for the taking of private property for a ditch. Dickerson v. Tri-County Drainage Dist., 138 Ark. 471, 212 S.W. 334 (1919).

# 14-121-407. Reassessment of benefits — Appeals.

(a) The commissioners of the districts shall have the power to make a reassessment of the benefits not more often than once a year, and the reassessment shall be made, advertised, and equalized as is provided for the original assessment of benefits.

(b) All appeals of landowners objecting thereto must be taken and perfected within thirty (30) days from the time of the county court's

action thereon.

**History.** Acts 1927, No. 203, § 2; Pope's Dig., § 4527; A.S.A. 1947, § 21-519.

Cross References. Reassessment of benefits, §§ 14-120-108, 14-120-109.

#### CASE NOTES

Suit Barred.

Where court approved a bond issued by commissioners for cost of additional drain-

age and pumping plant, a suit by landowners for reassessment based on fact that federal government had granted funds for construction of levee was barred by adverse decision in prior suit by same plaintiffs for reassessment as result of federal aid in construction of levee. Clements v. Bronaugh, 218 Ark. 783, 239 S.W.2d 1, cert. denied, 342 U.S. 866, 72 S. Ct. 106, 96 L. Ed. 651 (1951).

# 14-121-408. Alteration of plans — Reassessment.

(a) The commissioners may at any time alter the plans of the ditches and drains, but before constructing the work according to the changed plans, the changed plans with accompanying specifications showing the dimensions of the work as changed shall be filed with the county clerk. Notice of the filing shall be given by publication for one (1) insertion in some newspaper issued and having a bona fide circulation in each of the counties in which there are lands belonging to the district.

(b) If by reason of the change of plans either the board of commissioners or any property owners deem that the assessment on any property has become inequitable, they may petition the county court which shall thereupon refer the petition to the commissioners provided for in § 14-121-201, who shall reassess the property mentioned in the petition, increasing the assessment if greater benefits will be received and allowing damages if less benefits will be received or if damages will be sustained.

(c) In no event shall a reduction of assessments be made after the assessment of benefits has been confirmed, but any reduction in benefits shall be paid for as damages. That claim for damages shall be secondary and subordinate to the rights of the holders of bonds which have heretofore been issued.

(d) From the action of the commissioners in the matter, the property owners shall have the same right of appeal provided by § 14-121-405 for the original assessment.

**History.** Acts 1909, No. 279, § 17, p. § 3625; Pope's Dig., § 4476; A.S.A. 1947, 829; 1913, No. 177, § 2; C. & M. Dig., § 21-517.

#### CASE NOTES

ANALYSIS

Appeals.
Change in location.
Completion of improvements.
Materially different undertakings.
Remedies.

Appeals.

Where protesting landowners failed to appeal the trial court's initial order granting an extension of a river improvement district's powers to that of a drainage district, they could not, in a later appeal from the trial court's subsequent order approving an alteration of the drainage district's plans, raise the issue that the original plans did not comport with the

requirement that the purpose of allowing a river improvement district to expand its powers is to complete projects contemplated by an Act of Congress and the United States Army Corps of Engineers. Kinard v. Cache River Bayou DeView Imp. Dist., 285 Ark. 202, 686 S.W.2d 407 (1985).

Change in Location.

The commissioners of a drainage district have power to alter the location of a ditch at any time before constructing the work, even after a judgment of the county court is rendered confirming assessments of benefits. Protho v. Williams, 147 Ark. 535, 229 S.W. 38 (1921).

Where it had been demonstrated by various floods that ditch and spoil bank in

drainage district organized under general statutes was insufficient to give protection under the plans contemplated when district was organized, commissioners of the district had the power, in the absence of fraud, to enter into agreement to pay part of cost of obtaining land and easement necessary for construction of levee located in another district, to be built by federal government to protect land in both districts. Grassy Lake & Tyronza Drainage Dist. v. Drainage Dist. No. 17, 205 Ark. 694, 170 S.W.2d 1007 (1943).

### Completion of Improvements.

Where a drainage district is organized and the work completed, any plan of improvement thereafter contemplated would be a new plan, and not the original plan altered and changed, and there is no statutory authority to file or change plans after the work originally contemplated has been completed. Indian Bayou Drainage Dist. v. Walt, 154 Ark. 335, 242 S.W. 575 (1922).

While this section does not authorize an independent improvement after completion of the improvement as originally planned, it does authorize a change in original plan at any time before its completion so as to include lands necessary or benefited by the improvement. Bayou Meto Drainage Dist. v. Ingram, 165 Ark. 318, 264 S.W. 947 (1924).

An improvement is not "completed" until the main channel of the ditch reaches the outlet so as to carry off the water. Bayou Meto Drainage Dist. v. Ingram, 165 Ark. 318, 264 S.W. 947 (1924).

### Materially Different Undertakings.

Landowners were not entitled to a reassessment merely because federal government stepped in and constructed levee, unless levee as constructed by the federal government resulted in a materially different undertaking than that originally planned by the district. Harris v. Blackburn, 215 Ark. 195, 219 S.W.2d 922 (1949).

#### Remedies.

The remedy provided in this section excludes a right to resort to equity, in the absence of fraud, unavoidable casualty, or other ground for equitable interference. Hudson v. Simonson, 170 Ark. 243, 279 S.W. 780 (1923).

If levee plans of district are materially changed, this section permits injured person to sue for damages, but does not permit a few to injure the credit of the district once the undertaking is definitely launched by filing a petition for refund of assessments. Harris v. Blackburn, 215 Ark. 195, 219 S.W.2d 922 (1949).

Cited: Beaver Bayou Drainage Dist. v. Lee-Phillips Drainage Dist., 221 Ark. 550, 254 S.W.2d 465 (1953).

# 14-121-409. Petition that improvements and extensions proceed under revised plans — Notice, hearing, and appeal.

- (a) If the commissioners shall have filed plans for additional work in the district, no proceeding shall be taken looking to a confirmation of the assessment of benefits based thereon until a petition has been filed with the county court, signed by a majority in numbers, acreage, and value of the owners of land within the district, praying that the work as provided for in the plans shall proceed. If no such petition is filed with the county court within one (1) year after the filing of the assessment based upon the revised plans, the assessment of benefits shall be withdrawn by the commissioners, and nothing further shall be done toward the carrying out of the revised plans.
- (b) If the petition, purporting to be signed by a majority in value, number, and acreage of the property owners, is filed within the one-year time limit, it shall be the duty of the county clerk to give notice by publication once a week for two (2) weeks, the last insertion to be not less than ten (10) days before the date fixed for the hearing, of a date when the county court will hear the petition and determine whether it

is signed by the requisite majority and whether the assessment of benefits which has been based thereon shall be sustained.

County Clerk."

(d) On the day named in the notice, it shall be the duty of the county court to meet and to hear all persons who wish to be heard and first to determine whether a majority in numbers, acreage, or value of the landowners have petitioned for the doing of the work under the revised plans. If it finds that the majority have signed the petition, then it shall hear all persons who filed written complaints against the assessment of benefits of their own land or the lands of anyone else and determine whether the assessment of benefits is equitable and just, and to equalize it.

(e) From the action of the court any party aggrieved, including the commissioners of the district, may appeal to the circuit court. However, the appeal must be taken and perfected within thirty (30) days; in the circuit court, proceedings shall be deemed matters of public interest and heard at the earliest possible moment, and appeals from its decisions must be taken and perfected within thirty (30) days.

**History.** Acts 1927, No. 203, § 3; Pope's Dig., § 4528; A.S.A. 1947, § 21-520.

#### **CASE NOTES**

ANALYSIS

Jurisdiction. Signatures.

Jurisdiction.

The circuit court in the county in which the larger portion of the lands embraced within the district was situated, though the district was not originally organized there, had jurisdiction of proceedings for the assessments of benefits for widening and digging lateral ditches. Grady Drainage Dist. v. Free, 178 Ark. 346, 10 S.W.2d 854 (1928).

Signatures.

A petition for a proposed improvement in a drainage district must be signed by the majority of real estate owners in numbers, acreage, or valuation of the entire district, not merely by a majority of those in the territory alleged to be affected by the improvement. Walker v. Roland Drainage Dist., 212 Ark. 633, 207 S.W.2d 319 (1948).

### 14-121-410. Effect of reassessment.

(a) When any reassessment of benefits has been made and stands confirmed, it shall be the assessment of benefits until another reassessment has been made as provided in this chapter.

(b) Levies of the taxes on the reassessed benefits shall be made and collected in the same manner as levies on the original assessment of benefits and shall be a first lien on the lands of the district from the time they are made.

**History.** Acts 1927, No. 203, § 4; Pope's Dig., § 4529; A.S.A. 1947, § 21-521.

### 14-121-411. Benefits to lands in other districts — Assessments.

In case any land in any drainage or other improvement district is benefited, and for any reason it was not assessed in the original proceedings, or was not assessed to the extent of benefits received or in case any corporation, individual, or other drainage district organized under this or any other general or special act, outside the limits of any district organized or operating under the terms of this act, shall drain land into any ditch belonging to any district formed or operating under the terms of this act, the commissioners of the drainage district shall assess the benefits or the enhanced benefits received by the land, and the proceedings outlined in §§ 14-121-402 — 14-121-405 for assessing benefits to lands not included within the boundaries of the district shall in all matters be conformed with. However, this section and § 14-121-808 shall not operate to interfere with vested rights to natural drainage.

**History.** Acts 1909, No. 279, § 20, p. 829; 1913, No. 177, § 3; C. & M. Dig., § 3628; Pope's Dig., § 4479; A.S.A. 1947, § 21-531.

**Meaning of "this act".** Acts 1913, No. 177, is codified as §§ 14-121-101 — 14-

#### CASE NOTES

Cited: Beaver Bayou Drainage Dist. v. Lee-Phillips Drainage Dist., 221 Ark. 550, 254 S.W.2d 465 (1953).

## 14-121-412. District continuance — Additional levy.

(a) The district shall not cease to exist upon the completion of its drainage system but shall continue to exist for the purpose of preserving the system, of keeping the ditches clear from obstruction, and of extending, widening, or deepening the ditches from time to time as may be found advantageous to the district.

(b)(1)(A) To this end, the commissioners may, from time to time,

apply to the county court for the levying of additional taxes.

(B) The taxes may be levied as a flat tax per acre.

(2)(A) Upon the filing of the petition, notice shall be published by the clerk for two (2) weeks in a newspaper published in each of the counties in which the district embraces land.

(B) Any property owner seeking to resist the additional levy may appear at the next regular, special, or adjourned term of the county court or adjourned day of the court and urge his objections thereto.

(C) Either the property owners or the commissioners may appeal

from the finding of the county court.

**History.** Acts 1909, No. 279, § 22, p. 829; C. & M. Dig., § 3630; Pope's Dig., § 4481; Acts 1949, No. 28, § 1; A.S.A. 1947, § 21-533; Acts 1995, No. 343, § 2.

Amendments. The 1995 amendment added the subdivision designations in (b); and added (b)(1)(B).

### CASE NOTES

ANALYSIS

Improvements not authorized. Levy of taxes. Notice. Preservation of systems, etc.

Improvements Not Authorized.

A new and independent drainage canal exceeding in cost the whole system originally contemplated and completed is an improvement so extensive and so different from that originally planned that it would have to be accomplished through the formation of a new district, and not as an extension of the canal as originally constructed, nor as a widening or deepening of the ditch already completed. Indian Bayou Drainage Dist. v. Walt, 154 Ark. 335, 242 S.W. 575 (1922).

Where a new canal was proposed to furnish an outlet for a drainage system, which outlet was not available until after the drainage improvement had been completed, it was not an extension of a canal originally constructed nor a widening or deepening of ditches that were originally completed and therefore was not authorized. Clay v. England, 172 Ark. 373, 288 S.W. 895 (1926).

While the commissioners of a drainage district may preserve the improvement without a petition from the landowners to that effect, provided the necessary funds are available, if it is proposed to do the additional work, that is, work not contemplated by the original plans upon which the assessment of benefits was based, a petition by the landowners is required. Indian Bayou Drainage Dist. v. Dickie, 177 Ark. 728, 7 S.W.2d 794 (1928).

Levy of Taxes.

Petition filed by commissioners asking permission to charge betterments with a one percent annual levy to preserve levee without necessity of filing additional plans was granted where levee was then an integral part of the drainage district. Owen v. Central Clay Drainage Dist., 216 Ark. 159, 224 S.W.2d 529 (1949).

There is nothing to indicate that drainage system must be allowed to become obstructed and useless merely because maintenance was unnecessary for many years, and statute of limitations plays no part in matter until there is levied tax which gives district enforceable cause of

action. Watson v. Drainage Dist. No. 3, 218 Ark. 361, 236 S.W.2d 423 (1951).

Where drainage district filed a petition for authority to levy taxes in cleaning and widening ditches in district, the court could not consider issue raised by another drainage district as to whether the entire creek should be cleaned out, since original petition was a special proceeding. Beaver Bayou Drainage Dist. v. Lee-Phillips Drainage Dist., 221 Ark. 550, 254 S.W.2d 465 (1953).

The commissioners of an original drainage district from which several counties have withdrawn are the proper parties to initiate court action for levy of taxes against the lands of all the counties in the original district for the purpose of preserving the established drainage system and keeping the ditches clear from obstructions. Tri-County Drainage Dist. v. Morrison, 227 Ark. 29, 295 S.W.2d 781 (1956).

While a drainage district from which counties have withdrawn retains the power to seek tax levy on the withdrawn counties pro rata to "clean out" and maintain the established drainage system, a reasonable latitude of discretion and judgment is allowed the drainage commissioners and courts to determine what is maintenance of the system as opposed to the extension thereof. Tri-County Drainage Dist. v. Morrison, 227 Ark. 29, 295 S.W.2d 781 (1956).

### Notice.

If notice is published designating certain date for hearing, it is not necessary to be republished if hearing is recessed until another date. Beaver Bayou Drainage Dist. v. Lee-Phillips Drainage Dist., 221 Ark. 550, 254 S.W.2d 465 (1953).

Notice of hearing on tax levies against

all the lands in an original, established drainage district is not defective for failure to describe each parcel of land in the district or the boundaries of the district. Tri-County Drainage Dist. v. Morrison, 227 Ark. 29, 295 S.W.2d 781 (1956).

### Preservation of Systems, Etc.

The power of drainage commissioners to construct an embankment in aid of the drainage project after its completion was within the authority of the commissioners, and hence they were not individually liable for damages to land from overflow caused by the embankment. Gray v. Doyle, 167 Ark. 495, 269 S.W. 579 (1925).

A drainage district is authorized to lengthen its ditches. Lesser-Goldman Cotton Co. v. Cache River Drainage Dist., 174 Ark. 160, 294 S.W. 711 (1927).

Where a drainage district has on hand, after paying all debts, a surplus of funds, it may use them to preserve or repair the ditches by keeping them clear of obstructions and to extend, deepen, or widen them, since such use of the money is not a diversion thereof, but is for the necessary purposes of the district. Green v. Wulff Drainage Dist., 193 Ark. 1087, 104 S.W.2d 1076 (1937).

Court does not have the authority to control exercise of discretion by commissioners as to course they will follow in cleaning out ditches in the district. Beaver Bayou Drainage Dist. v. Lee-Phillips Drainage Dist., 221 Ark. 550, 254 S.W.2d 465 (1953).

Cited: Cherry v. Cousart Bayou Drainage Dist., 222 Ark. 404, 259 S.W.2d 513 (1953); Lee-Phillips Drainage Dist. v. Beaver Bayou Drainage Dist., 226 Ark. 105, 289 S.W.2d 192 (1956); Park Corp. v. Tri-County Drainage Dist., 226 Ark. 357, 290 S.W.2d 18 (1956).

## 14-121-413 — 14-121-419. [Reserved.]

# 14-121-420. Payment of assessments in drainage districts — Interest.

(a) When assessments of benefits have been made in drainage districts organized either under general or special acts, the property owner shall have the right to pay the assessment in full within sixty (60) days after the formation of the district, but if he does not avail himself of this privilege, the assessment of benefits shall bear interest at the rate of six percent (6%) per annum and shall be payable only in installments as levied.

- (b) The interest need not be computed until necessary to be sure that the collections have not exceeded the total amount of benefits and interest, or the interest may be first collected.
- (c) However, this section shall not apply to districts heretofore organized in which interest on bonds or other borrowed money was calculated as a part of the cost of construction and included in the assessment of benefits.

**History.** Acts 1919, No. 467, § 1; C. & M. Dig., § 3656; Pope's Dig., § 4507; Acts 1941, No. 285, § 1; A.S.A. 1947, § 21-541.

### **CASE NOTES**

ANALYSIS

In general. Interest.

### In General.

Right to distribute collection of assessments over a period of years rather than to require their immediate payment at the time they are approved by the county court is authorized by this section. Main v. Drainage Dist. No. 2, 204 Ark. 506, 162 S.W.2d 901 (1942).

### Interest.

A district's right to collect interest on deferred instalments of assessed benefits is not lost by failure to compute the interest in advance and add it to the instalments of assessments. Kersh Lake Drainage Dist. v. State Bank & Trust Co., 92 F.2d 783 (8th Cir. 1937).

Interest continues to accrue on matured but unpaid instalment bonds. Greer v.

Blocker, 218 Ark. 259, 236 S.W.2d 68 (1951).

Interest may be collected on assessed benefits. Greer v. Blocker, 218 Ark. 259, 236 S.W.2d 68 (1951).

To extent that collection of interest on benefits is necessary to pay outstanding indebtedness of district, subsection (c) is not applicable. Greer v. Blocker, 218 Ark. 259, 236 S.W.2d 68 (1951).

Subsection (c) does not have effect of removing district from operation of statutes which provide for interest on assessment of benefits. Watson v. Drainage Dist. No. 3, 218 Ark. 361, 236 S.W.2d 423 (1951).

In absence of some written evidence in assessment proceedings to show that commissioners included interest on bonds in assessment of benefits, subsection (c) is not applicable. Watson v. Drainage Dist. No. 3, 218 Ark. 361, 236 S.W.2d 423 (1951).

# 14-121-421. Payment of assessments in improvement districts — Interest.

- (a) When assessments of benefits are made in drainage and other improvement districts, the landowners shall have the privilege of paying the assessment in full within thirty (30) days after the assessment becomes final. However, the assessments shall be made payable in installments so that not more than twenty-five percent (25%) shall be collectible in any one (1) year against the wishes of the landowner. In the event that any landowner avails himself of this indulgence, the deferred installments of the assessed benefits shall bear interest at the rate of six percent (6%) per annum and shall be payable only in installments as levied.
- (b) The levy of the assessment may be made by way of proportional amounts of the total assessed benefits. Interest need not be calculated

until it is necessary to do so to avoid exceeding the total amount of benefits and interest.

(c) The amount of interest which will accrue on bonds issued by districts and subdistricts shall be included and added to the tax, but the interest to accrue on account of the issuing of the bonds shall not be construed as a part of the cost of construction in determining whether or not the expenses and costs of making the improvements are, or are not, equal to or in excess of the benefits assessed.

**History.** Acts 1913, No. 177, § 10; C. & M. Dig., § 3643; Pope's Dig., § 4494; A.S.A. 1947, § 21-540.

### CASE NOTES

ANALYSIS

In general. Purpose. Applicability. Interest.

### In General.

Liability of land in drainage district for unpaid obligations of the district is limited to full amount of betterment assessed with interest thereon. Kersh Lake Drainage Dist. v. Johnson, 203 Ark. 315, 157 S.W.2d 39 (1941), cert. denied, 316 U.S. 673, 62 S. Ct. 1044, 86 L. Ed. 1748 (1942).

Purpose.

This section has been held to imply an intention to declare the interest on bonds not to be a part of the cost of construction and is intended as authority for allowing interest on the bonds to be met by interest on the deferred payments of assessments. Oliver v. Whittaker, 122 Ark. 291, 183 S.W. 201 (1916).

One purpose of this section is to permit interest on benefits to offset interest on bonds. Watson v. Drainage Dist. No. 3, 218 Ark. 361, 236 S.W.2d 423 (1951).

Applicability.

This section is directed to districts already in existence and not only to those to be created in the future. Kersh Lake Drainage Dist. v. State Bank & Trust Co., 92 F.2d 783 (8th Cir. 1937).

### Interest.

A drainage district has power to collect interest on deferred payments of instalments of benefits. Kersh Lake Drainage Dist. v. Johnson, 203 Ark. 315, 157 S.W.2d 39 (1941), cert. denied, 316 U.S. 673, 62 S. Ct. 1044, 86 L. Ed. 1748 (1942).

If annual interest on assessed benefits was available to district if it chose to collect all or any part of it by the levy of a tax, district's failure to collect full amount of interest in given year operated as waiver of uncollected amount. Watson v. Drainage Dist. No. 3, 218 Ark. 361, 236 S.W.2d 423 (1951).

# 14-121-422. Procedure for levy of tax — Preliminary expenses — Validation of prior levies.

(a) The county court shall, at the same time that the assessment of benefits is filed or any subsequent time when called upon by the commissioners of the district, enter upon its records an order, which shall have all the force of a judgment, providing that there shall be assessed upon the real property of the district a tax sufficient to pay the estimated cost of the improvement with ten percent (10%) added for unforeseen contingencies.

(b) The tax shall be paid by the owner of the real property in the district, in proportion to the amount of the assessment of benefits

thereon, and which is to be paid in annual installments, payable not to exceed twenty-five percent (25%) for any one (1) year, as provided in the order.

(c) The tax so levied shall be a lien upon all the real property in the district from the time the tax is levied by the county court and shall be entitled to preference over all demands, executions, encumbrances, or liens whensoever created. The tax shall continue until the assessment, with penalty and costs that may accrue thereon, shall have been paid.

(d) The remedy against the assessment of taxes shall be by appeal, and the appeal must be taken within twenty (20) days from the time that the assessment has been made by the county court, and on appeal

the presumption shall be in favor of the legality of the tax.

(e) Any owner of real property within the district may by mandamus compel compliance by the county court with the terms of this section.

(f) If the commissioners do not deem it to the advantage of the district to proceed immediately with the construction of the improvements upon the filing and confirmation of the assessment of benefits, they may report to the county court the rate of taxation necessary to be levied to pay the preliminary expenses of the district. Thereupon it shall be the duty of the county court to make a levy of taxes upon the real property in the district sufficient to pay the preliminary expenses, with ten percent (10%) added for unforeseen contingencies, which tax shall be extended upon the tax books of the county and collected along with other taxes in the same manner as the taxes levied for construction purposes, as hereinbefore set forth. Where any levy has heretofore been made by the county court or any board of commissioners or directors, for the purpose of winding up the district, the levy is confirmed and ratified, and shall be collected in the manner provided by the law governing the district.

(g) Whenever any district embraces lands in more than one (1) county, the secretary of the board of commissioners shall file with the county clerk of each of the counties in which any land is situated a corrected copy of the order levying the tax, which shall be recorded by the county clerk in the county court records. The county clerk or other officials making up the general tax books from year to year shall annually extend the taxes upon the general tax books during the period provided for by the order, according to the assessment list for the county

on file in the county clerk's office.

**History.** Acts 1909, No. 279, § 9, p. 829; C. & M. Dig., § 3617; Acts 1923, No. 562, § 1; Pope's Dig., § 4465; Acts 1957, No. 327, § 4; A.S.A. 1947, § 21-542.

**Publisher's Notes.** Acts 1957, No. 327, § 6, provided that the act would be cumulative and would not repeal any then existing law and would not apply to any district already then organized. The section further provided that the act would not be deemed to take from any levee, drainage, or other improvement district the power or right the district then had to enter into and perform any contract or agreement of the United States Army Corps of Engineers or other federal agency.

### CASE NOTES

### Interest.

Where drainage district instalment bonds bore interest until paid, interest could be added to cost of improvement, plus 10 percent for unforeseen contingencies, before any question could arise that power to tax had been exhausted by previous levy of tax which was less in amount than amount of assessed benefits. Greer v. Blocker, 218 Ark. 259, 236 S.W.2d 68 (1951).

# 14-121-423. Validity of assessment or levy when error appears in description, etc.

No error in the names or residences of the owners of railroads, tramroads, lands, or improvements, or the description thereof, shall invalidate the assessment or levy of taxes if sufficient description is given to ascertain where the lands, railroads, or tramroads are situated.

**History.** Acts 1909, No. 279, § 27, p. 829; C. & M. Dig., § 3635; Pope's Dig., § 4486; A.S.A. 1947, § 21-549.

## 14-121-424. Insufficiency of tax — Additional levy.

(a) If the tax first levied shall prove insufficient to complete the improvement or to pay the bonds, both the principal and interest, issued by the board of commissioners on account of the improvement, as provided in this chapter, as the principal and interest shall become due and payable, the board shall report the amount of the deficiency to the county court. The county court shall thereupon make such further levy or levies on the property previously assessed for sums sufficient to complete the improvement and to pay the bonds and interest which shall be collected in the same manner as the first levy.

(b) The total levy or levies shall in no case exceed the value of the

benefits assessed on the property.

(c) The performance of the duties may be enforced by mandamus at the instance of any person or board interested.

**History.** Acts 1909, No. 279, § 12, p. § 3620; Pope's Dig., § 4471; A.S.A. 1947, 829; 1911, No. 136, § 1; C. & M. Dig., § 21-550.

### CASE NOTES

### Limitation.

Increased levies must be within the assessed benefits. Griffin v. Little Red

River Levee Dist., 157 Ark. 590, 249 S.W. 16 (1923).

## 14-121-425. Collection of taxes generally — Extension on county tax books.

(a) The amount of the taxes provided for in this section shall be annually extended upon the tax books of the county and collected by the collector of the county along with the other taxes. For his services in making the collection, the collector shall receive a commission as is now or may hereafter be provided by law. The amount collected shall be, by the collector, paid over to the commissioners of the respective districts at or before the time that he is now required to make settlement with the county treasurer for general taxes. However, this section shall not apply to any district that collects its annual assessments or taxes by collector other than the collector of state and county taxes.

(b) All districts shall collect their own assessments and taxes at their

respective offices and issue receipts therefor, if those districts:

(1) Maintain a permanent office open during business hours throughout the year;

(2) Are in charge of full-time employees;

(3) Have assessed benefits in excess of five million dollars (\$5,000,000); and

(4) Collect annual assessments of one hundred thousand dollars

(\$100,000) or more.

(c) If any collector whose duty it is to collect drainage tax shall fail to collect the drainage tax, he shall be subject to a penalty of one hundred dollars (\$100) for each instance in which he shall collect from an individual the other taxes and omit the drainage tax unless the drainage tax has been enjoined by a court of competent jurisdiction to be recovered in a suit brought by the commissioners to the use of the district. The county clerk shall be subject to a like penalty for each case in which he shall fail to enter the drainage tax on the tax books.

(d) Where a majority of the drainage districts request in writing that the collector issue separate receipts for drainage taxes, he shall do so. A perforated receipt shall be deemed a separate receipt. However, this section shall not apply to any district that now collects or may hereafter collect its annual assessments or taxes by a collector other than the

collector of state and county taxes.

**History.** Acts 1909, No. 279, § 10, p. 829; C. & M. Dig., § 3618; Acts 1937, No. 350, §§ 1, 2; Pope's Dig., §§ 4468, 4469; Acts 1939, No. 50, §§ 1-2a; 1945, No. 180, §§ 1, 2; A.S.A. 1947, §§ 21-543 — 21-545.

Cross References. Collection of taxes in improvement districts, § 14-86-801.

Payment of improvement district taxes with bonds of district, § 14-86-803.

### **CASE NOTES**

#### Collector.

The collector must accept general taxes alone, when tendered. Howell v.

Lamberson, 149 Ark. 183, 231 S.W. 872 (1921).

## 14-121-426. Time for payment of tax — Delinquency.

(a) All taxes levied under the terms of this act shall be payable on or before October 1 of each year.

(b) If any taxes levied by the county court in pursuance to this act are not paid at maturity, the collector shall not embrace the taxes in the taxes for which he shall sell the lands, but he shall report the delinquents to the board of commissioners of the district, who shall add to the amount of the tax a penalty of twenty-five percent (25%).

(c) The board of commissioners shall enforce the collection by chancery proceedings in a court of the county in which the lands are situated having chancery jurisdiction. The court shall give judgment against the lands, railroads, or tramroads for the amount of the taxes, and the penalty of twenty-five percent (25%) and interest thereon, from the end of the sixty (60) days allowed for the collection thereof, at the rate of six percent (6%) per annum, and all costs of the proceedings.

(d) The judgments shall provide for the sale of the delinquent lands for cash by a commissioner of the court, after advertisement as set out

in § 14-121-430.

(e) Proceedings and judgment shall be in the nature of proceedings in rem.

- (f) It shall be immaterial that the ownership of the lands be incorrectly alleged in the proceedings. Judgment shall be enforced wholly against the lands and not against any other property or estate of the defendant.
- (g) All or any part of the delinquent lands, railroads, or tramroads for each of the counties may be included in one (1) suit for each county, instituted for the collection of the delinquent taxes, etc., as aforesaid.

**History.** Acts 1909, No. 279, § 23, p. 829; C. & M. Dig., § 3631; Pope's Dig., § 4482; Acts 1939, No. 163, § 1; A.S.A. 1947, § 20-1124, 21-546.

Meaning of "this act". Acts 1909, No. 279, codified as §§ 14-121-101, 14-121-102, 14-121-104, 14-121-105, 14-121-201 — 14-121-205, 14-121-207, 14-121-301, 14-121-304, 14-121-305, 14-121-307, 14-121-310, 14-121-311, 14-121-313, 14-121-401 — 14-121-406, 14-121-408, 14-121-

411, 14-121-412, 14-121-422 — 14-121-432, 14-121-440 — 14-121-442, 14-121-802 — 14-121-805, and 14-121-808.

Cross References. Delinquent improvement taxes generally, § 14-86-1101 et seq.

Payment of levee and drainage tax in instalments, § 14-120-110.

Remission of delinquent penalties in excess of 10 percent, § 14-86-1002.

### **CASE NOTES**

ANALYSIS

Allegations of ownership. Illegal assessments. Liability of landowners.

Allegations of Ownership.

Where, in foreclosure sale, the name of the supposed owner was given as "appears on the tax books," it was not necessary that an investigation be undertaken to determine the supposed owner. Leonard v. Thompson, 228 Ark. 136, 306 S.W.2d 869 (1957).

Illegal Assessments.

Where illegal assessment was made against land, payment of taxes by the landowner, with knowledge of the facts, was voluntary and the taxes could not be recovered, where it appeared that, although the lands would have been declared delinquent, they could not have been levied upon and seized to enforce payment. Brunson v. Board of Directors, 107 Ark. 24, 153 S.W. 828 (1913).

Liability of Landowners.

Where lands are properly included within a drainage district, upon the taxes becoming delinquent, the landowner is liable for taxes, penalty, attorney's fees, and interest. Tarleton Drainage Dist. v. American Inv. Co., 187 Ark. 385, 59 S.W.2d 1029 (1933).

Where land against which a drainage

district had assessed benefits was taken by the state highway commission by condemnation for highway purposes, the district has no interest in the condemned land apart from that of the owner entitling it to a separate award of damages from the highway commission, but its interest is in the nature of a lien and its sole remedy is against the award to the owner. Arkansas State Hwy. Comm'n v. Sub-District No. 3, 237 Ark. 614, 376 S.W.2d 259 (1964).

Cited: Brown v. Wells, 228 Ark. 179, 306 S.W.2d 865 (1957).

## 14-121-427. Notice of proceedings for collection of taxes.

Notice of the pendency of the suit shall be given by publication weekly for four (4) weeks before judgment is entered for the sale of the lands, railroads, or tramroads, in some newspaper published in the county where the suits may be pending, which public notice may be in the following terms:

"Board of Commissioners, Drainage District

VS.

Delinquent Lands.

All persons having or claiming an interest in any of the following described lands, are hereby notified that suit is pending in the Chancery Court of ...... County, Arkansas, to enforce the collection of certain drainage taxes on the subjoined list of lands, each supposed owner having been set opposite his or her or its lands, together with the amounts severally due from each, to wit:

(Then shall follow a list of supposed owners, with a descriptive list of said delinquent lands, and amounts due thereon respectively as aforesaid), and said public notice may conclude in the following form:

All persons and corporations interested in said lands are hereby notified that they are required by law to appear within four (4) weeks and make defense to said suit, or the same will be taken for confessed and final judgment will be entered directing the sale of said lands for the purpose of collecting said taxes, together with the payment of interest, penalty and costs allowed by law.

Clerk of said Court."

**History.** Acts 1909, No. 279, § 23, p. 829; C. & M. Dig., § 3631; Pope's Dig., § 4482; A.S.A. 1947, § 21-546.

### CASE NOTES

### ANALYSIS

Date.
Description of lands.
Supposed owners.

### Date.

Notice of pendency of suit instituted to foreclose delinquent drainage taxes does not need to be dated. Deaner v. Gwaltney, 194 Ark. 332, 108 S.W.2d 600 (1937).

### Description of Lands.

The notice must correctly describe the lands to be sold and is not susceptible to amendment; a correct description is necessary in order to give the court jurisdiction. Beck v. Anderson-Tulley Co., 113 Ark. 316, 169 S.W. 246 (1914).

The court was without jurisdiction to order a sale of land for drainage tax where the land was not described in the published notice, and the sale was properly cancelled on collateral attack. Union Inv. Co. v. Hunt, 187 Ark. 357, 59 S.W.2d 1039 (1933).

### Supposed Owners.

Where no person named Smith ever owned the lands and a neighboring owner was named Smith, the constructive notice of process showing Smith as owner was misleading and the foreclosure decree was void. Isaack v. Davis, 254 Ark. 115, 491 S.W.2d 784 (1973).

**Cited:** Brown v. Wells, 228 Ark. 179, 306 S.W.2d 865 (1957).

## 14-121-428. Trial date - Suit by bondholder.

(a) The suit shall stand for trial at the first term of court after the complaint may be filed, if four (4) weeks shall expire either before the first day of the term, or during the term of court to which the suits are brought respectively, unless a continuance is granted for good cause shown, within the discretion of the court. The continuance, for good cause shown, may be granted as to a part of the lands or defendants without affecting the duty of the court to dispose finally of the others as to whom no continuance may be granted.

(b) In case the commissioners shall fail to commence suit within sixty (60) days after the taxes become delinquent, the holder of any bond issued by the district shall have right to bring suit for the collection of the delinquent assessments, and the proceedings in the suit brought by the bondholder shall in all respects be governed by the provisions

applicable to suits by the commissioners.

**History.** Acts 1909, No. 279, § 23, p. 829; C. & M. Dig., § 3631; Pope's Dig., § 4482; A.S.A. 1947, § 21-546.

### CASE NOTES

**Cited:** Brown v. Wells, 228 Ark. 179, 306 S.W.2d 865 (1957).

## 14-121-429. Trial procedure.

(a) Suits for collection shall be conducted in the name of the drainage district, and in accordance with the practice and proceedings of chancery courts in this state, except as otherwise provided in this chapter, and neither attorneys ad litem nor guardians ad litem, nor any of the provisions of § 16-65-403 shall be required.

(b) The suits may be disposed of on oral testimony, as in ordinary suits at law.

(c) This law shall be liberally construed to give to the assessment and tax lists the effect of bona fide mortgage for a valuable consideration, and a first lien upon the lands, railroads, and tramroads, as against all

persons having an interest therein.

(d) In such suits it shall be sufficient to allege generally and briefly the organization of the district and the nonpayment of the taxes, setting forth the description of the lands proceeded against, and the amount chargeable to each tract, with prayer for foreclosure.

(e) No informality or irregularity in holding any of the meetings provided for herein, in valuation, in assessment of the lands, or in the name of the owners, or the number of acres therein shall be a valid

defense to the action.

**History.** Acts 1909, No. 279, § 24, p. § 4483; Acts 1953, No. 226, § 1; A.S.A. 829; C. & M. Dig., § 3632; Pope's Dig., 1947, § 21-547.

### **CASE NOTES**

Cited: Davidson v. Hartsfield, 250 Ark. Davis, 254 Ark. 115, 491 S.W.2d 784 1072, 468 S.W.2d 774 (1971); Isaack v. (1973).

### 14-121-430. Sale of land.

- (a)(1) In all cases where notice has been properly given and where no answer has been filed or, if filed, and the cause decided for the plaintiff, the court, by its decree, shall grant the relief as prayed for in the complaint. The court shall direct the commissioner to sell the lands, railroads, and tramroads described in the complaint at the courthouse door of the county wherein the decree is entered, at public outcry, to the highest and best bidder, for cash in hand, after having first advertised the sale weekly for two (2) weeks, consecutively, in some newspaper published in the county, if there is one. If there is no newspaper, then that advertisement shall be published in some newspaper in an adjoining county. The advertisement may include all the lands described in the decree.
- (2) If all the lands, railroads, and tramroads are not sold on the day as advertised, the sale shall continue from day to day until completed.
- (3) The commissioner shall by proper deeds convey to the purchaser the lands, railroads, and tramroads so sold. The title to the lands, railroads, and tramroads shall thereupon become vested in the purchaser as against all others whomsoever, saving to infants and to insane persons having no guardian or curators, the right they now have by law to appear and except to the proceedings within three (3) years after their disabilities are removed.
- (b)(1) In any case where the lands, railroads, and tramroads are offered for sale by the commissioner, as provided by this act, and the sum of the tax due, together with interest, cost, and penalty, is not bid for the lands, railroads, and tramroads, the commissioner shall bid the

lands, railroads, and tramroads off in the name of the board of directors of the drainage district, bidding therefor the whole amount due as aforesaid.

(2) The commissioner shall execute his deed conveying the land to the drainage board. No report of sale other than the execution of the deed and its submission to the court for approval and no confirmation other than approval of the deed need be made in any such case, and a deed to the land executed by the commissioner, approved by the court and recorded, shall be conclusively presumed to be in consideration of the total amount rightfully due to the district whether that amount is stated or whether it is stated correctly or incorrectly in the deed.

(3) The deeds, together with other deeds as are duly executed in conformity to the provisions of this act and recorded, shall be received as evidence in all cases showing an indefeasible title in the district

unassailable in either law or equity.

**History.** Acts 1909, No. 279, §§ 23, 24, p. 829; C. & M. Dig., §§ 3631, 3632; Pope's Dig., §§ 4482, 4483; Acts 1953, No. 226, § 1; A.S.A. 1947, §§ 21-546, 21-547.

Meaning of "this act". See note to § 14-121-426.

Cross References. Lien of district may be enforced notwithstanding tax sale to state, § 14-86-1601 et seq.

### RESEARCH REFERENCES

Ark. L. Rev. A Commentary on State and Improvement District Tax Sales, 8 Ark. L. Rev. 386.

### **CASE NOTES**

ANALYSIS

Complaint.
Persons under disabilities.

Complaint.

The complaint must correctly describe the lands to be sold and is not susceptible to amendment; a correct description is necessary in order to give the court jurisdiction. Beck v. Anderson-Tulley Co., 113 Ark. 316, 169 S.W. 246 (1914).

### Persons Under Disabilities.

Subdivision (a)(3) is not a redemption

statute and does not confer upon minors different rights of redemption from those given to other owners. Deaner v. Gwaltney, 194 Ark. 332, 108 S.W.2d 600 (1937).

Cited: Brown v. Wells, 228 Ark. 179, 306 S.W.2d 865 (1957); Davidson v. Hartsfield, 250 Ark. 1072, 468 S.W.2d 774 (1971); Isaack v. Davis, 254 Ark. 115, 491 S.W.2d 784 (1973).

## 14-121-431. Attorney's fees.

In all suits brought for collection of delinquent taxes under this subchapter, a reasonable attorney's fee shall be taxed in favor of the attorney for the plaintiff, which fee shall be added to the amount of the cost.

**History.** Acts 1909, No. 279, § 23, p. 829; C. & M. Dig., § 3631; Pope's Dig., § 4482; A.S.A. 1947, § 21-546.

### **CASE NOTES**

**Cited:** Brown v. Wells, 228 Ark. 179, 306 S.W.2d 865 (1957).

## 14-121-432. Redemption.

- (a) At any time within two (2) years after the rendition of the final decree of the chancery court provided for in this subchapter, the owner of the lands may file his petition in the court rendering the decree, alleging the payment of taxes on the land for the year for which they were sold.
- (b) Upon the establishment of that fact, the court shall vacate and set aside that decree, provided that any landowner shall have the right within two (2) years after the day upon which lands are offered for sale to redeem any and all lands sold at the sale.

**History.** Acts 1909, No. 279, § 24, p. 829; C. & M. Dig., § 3632; Pope's Dig., § 4483; Acts 1953, No. 226, § 1; A.S.A. 1947, § 21-547.

Cross References. Redemption of improvement district lands, § 14-86-1105.

### **CASE NOTES**

ANALYSIS

Alleging payment of taxes. Right to redeem.

Alleging Payment of Taxes.

Where the petitioners filed their petition within two years after the rendition of the decree, such decree condemning the lands was not conclusive of the issues raised by the petition whether the taxes had been paid for the year in which they were returned delinquent since the proceeding was to be considered as directly attacking the decree. Fleischer v. Wappanocca Outing Club, 118 Ark. 287, 176 S.W. 312 (1915).

Where land has been sold for drainage taxes under a decree of the chancery court and the sale has been confirmed, the title of the purchaser at the tax sale is not open to collateral attack upon the ground that the taxes had been paid. Smith v. Spillman, 135 Ark. 279, 205 S.W. 107 (1918).

Proof of publication was sufficiently identified so as to make it part of the record in a suit to set aside a tax sale. Union Inv. Co. v. Hunt, 187 Ark. 357, 59 S.W.2d 1039 (1933).

### Right to Redeem.

When an owner of land tenders his taxes due and the collector by mistake refuses to accept them, the owner may redeem the land if it is subsequently sold. Fleischer v. Wappanocca Outing Club, 118 Ark. 287, 176 S.W. 312 (1915).

Though when drainage district was formed, statute fixed at five years the time within which property could be redeemed from delinquent tax sale, subsequent reduction by the legislature of the redemption period was held not a violation of the contract clause of the Arkansas Constitution. State Nat'l Bank v. Morthland, 196

Ark. 346, 118 S.W.2d 266 (1938).

Cited: Davidson v. Hartsfield, 250 Ark. 1072, 468 S.W.2d 774 (1971); Isaack v. Davis, 254 Ark. 115, 491 S.W.2d 784 (1973).

### 14-121-433. Land subject to improvement district tax lien — Sale and resale.

(a) On sales of land condemned to be sold for the taxes of drainage districts and other improvement districts in this state, the land shall first be offered subject to the lien of all improvement district assess-

ments then existing on it.

- (b) If no one will purchase on those terms, the commissioner appointed to make the sale shall report that fact to the court and the land shall not again be offered for sale until after the lapse of one (1) year, nor until an attorney ad litem has been appointed to notify the commissioners or directors of other improvement districts and the trustees of all bondholders having liens thereon that the lands have been offered for sale on those terms and that no purchaser therefor has been found.
- (c) Upon the coming in of the report of the attorney ad litem, showing in detail the notice that he has given to the commissioners or directors of other improvement districts having liens upon the property, and to the trustees of the bondholders of all districts having liens on the property, the court shall make an order for the sale of the lands free of encumbrances of the assessments of all other improvement districts that are subordinate to the lien that is foreclosed, but subject to subsequent installments of the assessments of benefits in the plaintiff district.

(d) When the sale is made, any balance that may remain after paying the cost of foreclosure and the amount of the lien that is foreclosed shall

be distributed by the court in an equitable manner.

(e) If the board of commissioners or directors of any drainage district having a lien on the lands or the trustee of any bondholders having such lien is not notified of the application for the sale, they may on motion at any time within three (3) years have the sale set aside and the lands resold

History. Acts 1913, No. 177, § 14; C. & M. Dig., § 3646; Pope's Dig., § 4497; A.S.A. 1947, § 21-548.

### **CASE NOTES**

ANALYSIS

In general. Purchasers of liens.

Sale of lands. Setting aside sales. In General.

This section contemplates that the sale under the paramount lien shall free the land of assessments of other improvement districts that have already accrued, but not cut off the lien of instalments of such districts subsequently accruing. Board of Comm'rs v. Board of Dirs., 181 Ark. 898, 28 S.W.2d 721 (1930).

### Purchasers of Liens.

If street improvement district forecloses its lien and sells property and sewer improvement district forecloses its lien upon the same property and sells its interest, the respective purchasers from the two districts are not tenants in common, but divide fund on sale of property in ratio to amount of their respective liens upon the property. Sanders v. Mhoon, 214 Ark. 589, 217 S.W.2d 349 (1949).

### Sale of Lands.

It was not necessary to resort to sale under this section before land was sold to the drainage district in payment of taxes due thereon, since the land was necessarily sold subject to the lien of all assessments existing against them at the time of the sale. Oliver v. Gann, 183 Ark. 959, 39 S.W.2d 521 (1931).

### Setting Aside Sales.

Any right of action to set aside a sale is barred if suit is not brought within three years after the sale. Sadler v. Hill, 243 Ark. 247, 419 S.W.2d 298 (1967).

## 14-121-434 — 14-121-439. [Reserved.]

### 14-121-440. Bonds — Prohibitions.

(a) It shall not be lawful for:

(1) The board of the district, or any officer, member, or agent thereof, to pledge or deposit any bond or coupon issued under the provisions of this act as security for payment of any borrowed money or any debt or obligation of board or any person, firm, or corporation whatever;

(2) The board of the district, or any officer, member, or agent thereof, to appropriate or use any money arising from the sale of any bond or bonds authorized to be issued under this act for any use or purpose whatever other than is herein specified and expressly directed.

(b) Any member, officer, or agent of the board of the district who shall violate any of the provisions of this section shall be deemed guilty of a felony and upon conviction shall be punished by imprisonment in the penitentiary for not less than one (1) year nor more than five (5) years.

(c) To the payment of both the principal and interest of the bonds to be issued under the provisions of this act, the entire revenues of the district arising from any and all sources and all real estate, railroads, and tramroads subject to taxation in the district are by this act pledged. The board of directors is required to set aside annually from the first revenues collected from any source whatever a sufficient amount to secure and pay the interest on the bonds and a sinking fund for their ultimate retirement if a sinking fund is contracted for.

History. Acts 1909, No. 279, § 26, p. Meaning of "this act". See note to 829; C. & M. Dig., § 3634; Pope's Dig., § 14-121-426. § 4485; A.S.A. 1947, § 21-555.

### **CASE NOTES**

Cited: Oliver v. Western Clay Drainage Dist., 187 Ark. 539, 61 S.W.2d 442 (1933).

# 14-121-441. Issuing bonds and evidences of debt to hasten work — Terms of bonds.

(a) In order to hasten work, the board may borrow money at a rate of interest as provided for in a resolution of the commissioners, may issue negotiable bonds therefor, signed by the members of the board, and may pledge all assessments for the repayment thereof. It may also issue to the contractors who do the work its negotiable evidences of debt, bearing interest at such rate or rates as determined by the board.

(b) No bonds issued under the terms of this act shall run for more than thirty (30) years. All issues of bonds may be divided so that a portion thereof may mature each year as the assessments are collected, or they may all be made payable at the same time, with proper

provision for a sinking fund.

**History.** Acts 1909, No. 279, § 15, p. 829; C. & M. Dig., § 3623; Pope's Dig., § 4474; Acts 1970 (Ex. Sess.), No. 49, § 1; 1975, No. 225, § 10; 1981, No. 425, § 10; A.S.A. 1947, § 21-553.

Meaning of "this act". See note to § 14-121-426.

### **CASE NOTES**

ANALYSIS

Advertisement. Bidding. Borrowing.

### Advertisement.

An advertisement of the sale of bonds is not required. Boyce v. Clapham, 142 Ark. 519, 219 S.W. 24 (1920).

### Bidding.

This section does not contemplate that there should be but a single bid which would dispose of both the bonds and the work, and a single contract let by the commissioners is made without authority. Hopson v. Hellums, 108 Ark. 460, 158 S.W. 771 (1913).

### Borrowing.

The authority to purchase a dragline costing \$45,000 and the issuing of bonds therefor was sustained where the district had money on hand to pay existing bonds and unused benefits in excess of \$500,000. Cherry v. Cousart Bayou Drainage Dist., 222 Ark. 404, 259 S.W.2d 513 (1953).

# 14-121-442. Security for bonds — Levy and collection of tax — Default in payment of bonds.

(a) All bonds issued by commissioners under the terms of this act shall be secured by a lien on all lands, railroads, and tramroads in the district. The board of directors shall see to it that a tax is levied annually and collected under the provisions of this act, so long as it may be necessary to pay any bond issued or obligation contracted under its authority; and the making of the assessment or levy and collection may be enforced by mandamus.

(b) If any bond or interest coupon on any bond issued by the board is not paid within thirty (30) days after its maturity, it shall be the duty of the chancery court of the proper county, on the application of any holder of the bond or interest coupon so overdue, to cause the collection of the taxes set out in this chapter. The proceeds of the taxes and

collections shall be applied, after payment of costs, first to overdue interest and then to payment pro rata of all bonds issued by the board which are then due and payable; and the commissioners may be directed by suit to foreclose the lien of the taxes on the lands.

(c) The suits so brought by the commissioners shall be conducted in all matters as suits by the board, as provided in this chapter, and with

like effect.

(d) The decrees and deeds herein shall have the same presumptions in their favor.

**History.** Acts 1909, No. 279, § 25, p. 829; C. & M. Dig., § 3633; Pope's Dig., § 4484; A.S.A. 1947, § 21-554.

Meaning of "this act". Acts 1909, No. 279, codified as §§ 14-121-101, 14-121-102, 14-121-104, 14-121-105, 14-121-201 — 14-121-205, 14-121-207, 14-121-301,

# 14-121-443. Tax to pay off bonds issued for preliminary expenses.

(a)(1) For the purpose of paying the principal and interest of any bonds issued to pay preliminary expenses, either original or refunding bonds, when an assessment of benefits has not been made on the real property of the district, the court by which the district was established shall, when called upon by the commissioners of the district, enter upon its records an order, which shall have all the force and effect of a judgment, providing that there shall be assessed and collected a tax upon the real property of the district. This tax shall be sufficient to pay the bond issue as the bond issue matures, with ten percent (10%) added for unforeseen contingencies, based upon the valuation thereof as shown by the last assessment for county and state purposes. This tax shall be extended upon the tax books of the county and collected in the same manner as may be provided by law for the collection of taxes for state and county purposes, and for his services in making the collection, the collector shall receive a commission of one percent (1%).

(2) The tax so levied shall be a lien on all the real property of the

district from the time the tax is levied by the court.

(3) The remedy against the assessment of taxes shall be by appeal, and the appeal must be taken within twenty (20) days from the time the assessment of taxes has been made by the court, and on appeal the

presumption shall be in favor of the legality of the tax.

(b) The levy and collection of a tax for the payment of bonds issued to pay for preliminary expenses of a district or refunding bonds issued for such purposes shall not operate as an abandonment of the district, but the organization of the district shall be continued until such time as the board of commissioners of the district may deem it advisable to complete the improvements contemplated in the district, or, until it may be deemed advisable to abolish the district in the manner provided in subchapter 10 of this chapter.

**History.** Acts 1927, No. 59, § 2; Pope's Dig., § 4524; A.S.A. 1947, § 21-560.

Cross References. Issuance of bonds to pay preliminary expenses, § 14-86-702.

# 14-121-444. Issuance of certificates of indebtedness for maintenance — Appeal.

(a) Any drainage district organized under and pursuant to the laws of the State of Arkansas in which an additional tax levy has been made for the purpose of preserving the drainage system and of keeping the ditches clear from obstruction and of extending, widening, or deepening the ditches thereof, in order not to delay the necessary work, may issue and sell, with the approval of the court levying or approving the levying of the additional taxes, certificates of indebtedness, bearing interest at a rate not to exceed six percent (6%) per annum and for a total amount not to exceed one (1) annual tax. These certificates shall be, and are made, negotiable and shall mature and be made payable within one (1) year after their issuance and shall constitute a lien and charge against any funds of the district not previously pledged.

(b) No such certificates of indebtedness shall be issued while any appeal from any order levying such additional taxes is pending in any of the courts of this state, nor shall any such certificates of indebtedness be issued prior to the expiration of the time for appeal from any such

order levying such taxes.

(c) However, the provisions of this section requiring the approval of the court of tax levies shall not apply to drainage districts which have heretofore been organized and created by special acts wherein it is provided that all tax levies shall be made by resolution or order of the board of commissioners or directors, and the provisions of such special

acts so provided shall remain in full force and effect.

(d) Any property owner or the commissioners of any drainage district may appeal from the finding of the county court, or the circuit court where the lands comprising the district lie in more than one (1) county, on any petition for the levying of additional taxes for the purpose of preserving the drainage system and of keeping the ditches clear from obstruction and of extending, widening, or deepening the ditches thereof, at any time within thirty (30) days from the rendition of the finding, order, or judgment, but not thereafter.

**History.** Acts 1951, No. 72, §§ 1-3; A.S.A. 1947, §§ 21-583, 21-584.

## 14-121-445. Refunding bonds.

(a) Any drainage district in this state which has issued and sold bonds, prior to the assessment of benefits on the property of the district, for the purpose of paying preliminary expenses of the district is authorized and empowered to issue refunding bonds for the purpose of paying any bond or bonds of the district then outstanding.

(b)(1) The refunding bonds shall mature at such time or times as the

board of commissioners of the district may direct.

(2) The refunding bonds may not bear a greater rate of interest than six percent (6%) per annum. However, the bonds may be converted into a larger amount of bonds bearing a lower rate of interest on such terms that the district shall receive therefor and pay thereon substantially the same amount of money.

(c) The refunding bonds shall not be issued for a substantially greater amount than is necessary to pay outstanding bonds with all interest thereon in addition to such discounts and expenses only as may

be necessary and incident to the refunding bond issue.

History. Acts 1927, No. 59, § 1.

Cross References. Preliminary expenses, issuance of bonds, § 14-86-702.

### CASE NOTES

Double Purposes.

A single bond issue for the double purposes of refunding outstanding bonds of a drainage district and to obtain money for additional work is authorized. Indian Bayou Drainage Dist. v. Dickie, 177 Ark. 728, 7 S.W.2d 794 (1928).

### Subchapter 5 — Subdistricts

SECTION.

14-121-501. Applicability of §§ 14-121-204 and 14-121-205.

14-121-502. Formation procedure in county court.

14-121-503. Formation procedure in circuit court.

SECTION.

14-121-504. Commissioners — Subsequent proceedings.

14-121-505. Authority to do construction for land reclamation.

Effective Dates. Acts 1913, No. 177, § 22: approved Mar. 13, 1913. Emergency declared.

Acts 1917, No. 270, § 2: approved Mar. 21, 1917. Emergency declared.

Acts 1959, No. 153, § 2: Mar. 4, 1959. Emergency clause provided: "It has been found and is declared by the General Assembly of the State of Arkansas that many of the improvements constructed by drainage districts subject to the general laws have been found to be inadequate for the purposes for which they were designed, and many have so deteriorated

that they do not function so as to realize the purposes of the organization of such original drainage districts; that adequate means do not now exist to remedy these conditions, resulting in large areas of lands remaining overflowed and wet for long periods of time, all to the detriment of the public; and that enactment of this measure will provide the needed remedy. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

#### CASE NOTES

ANALYSIS

Improvements. Organization.

Improvements.

The extent or magnitude of improvement contemplated in the proposed subdistrict is immaterial. Mahan v. Wilson, 169 Ark. 117, 273 S.W. 383 (1925).

Organization.

A subdistrict of land wholly or partly within a drainage district may be organized and become a part of the principal district though such district has been completed. Shewmake v. Hudson, 171 Ark. 739, 285 S.W. 382 (1926).

A subdistrict organized as part of a drainage district becomes a separate entity so far as the assessment of benefits necessary to construct it is concerned. Shewmake v. Hudson, 171 Ark. 739, 285 S.W. 382 (1926).

**Cited:** Walker v. Roland Drainage Dist., 212 Ark. 633, 207 S.W.2d 319 (1948).

## 14-121-501. Applicability of §§ 14-121-204 and 14-121-205.

The provisions of §§ 14-121-204 and 14-121-205 shall apply to the organization of a subdistrict the same as to the organization of the district.

**History.** Acts 1913, No. 177, § 18; C. & M. Dig., § 3650; Pope's Dig., § 4501; A.S.A. 1947, § 21-509.

## 14-121-502. Formation procedure in county court.

(a)(1) When three (3) or more owners of real property within a proposed subdistrict, composed of land wholly within a drainage district, or partly within and partly without that district, shall petition the county court to establish a subdistrict to embrace their property, describing generally the region which it is intended shall be embraced within the subdistrict, and shall file a good bond to pay for the expense of the survey of the proposed subdistrict, in case the subdistrict is not formed, it shall be the duty of the county court to enter upon its records an order directing the commissioners of the main district to forthwith proceed to cause a survey to be made and to ascertain the limits of the region which would be benefited by the proposed system of improvements.

(2) The commissioners shall cause a survey to be made and shall file with the county clerk a report showing the territory which will be benefited by the proposed improvement, giving a general idea of its character and expense and making suggestions as to the size of the drainage ditches and their location as the commissioners may deem advisable. They shall file their report with the county clerk.

(3) All expenses incident to preparing those plans, estimates, and the cost of publication shall be paid from the funds of the main drainage district, as the work progresses, upon proper showing to the commissioners of the district. However, all expenses incurred by the subdistricts shall be repaid out of the proceeds of the first money received by the proposed subdistrict.

(b)(1) The county clerk shall thereupon give notice by publication for two (2) weeks in some newspaper published in the county or counties in which the subdistrict will be located, calling upon all persons owning

property in the subdistrict to appear before the court on some day fixed by the court to show cause in favor of or against the establishment of the subdistrict.

(2) At the time named in the notice, the county court shall meet and hear all property owners within the proposed subdistrict who wish to appear and advocate or resist the establishment of the subdistrict.

(3) If it appears to the court that the petition is signed by three (3) or more owners of real property within the subdistrict and if it appears to the county court that the organization of the proposed subdistrict will be conducive to the public health, convenience, and welfare, and to the interest of the owners of real property therein, then it shall make an order upon its records to the terms and provisions of this act.

(4) If the county court does not act promptly in complying with the terms of this section or any other section in this act essential to the creation and operation of the district, it may be compelled to do so by

mandamus.

**History.** Acts 1913, No. 177, § 18; C. & M. Dig., § 3650; Pope's Dig., § 4501; A.S.A. 1947, §§ 21-509, 21-510.

**Meaning of "this act".** Acts 1913, No. 177, codified as §§ 14-121-101 — 14-121-103, 14-121-206, 14-121-303, 14-121-309,

 $\begin{array}{c} 14\text{-}121\text{-}312,\, 14\text{-}121\text{-}314,\, 14\text{-}121\text{-}402\, - \, 14\text{-}121\text{-}405,\,\, 14\text{-}121\text{-}408,\,\, 14\text{-}121\text{-}411,\,\, 14\text{-}121\text{-}421,\,\, 14\text{-}121\text{-}433,\,\,\, 14\text{-}121\text{-}501\,\, - \,\,\, 14\text{-}121\text{-}504,\,\, 14\text{-}121\text{-}806\,\, - \,\,\, 14\text{-}121\text{-}808,\,\, \text{and}\,\,\, 14\text{-}121\text{-}810. \end{array}$ 

### **CASE NOTES**

**Cited:** Walker v. Roland Drainage Dist., 212 Ark. 633, 207 S.W.2d 319 (1948).

## 14-121-503. Formation procedure in circuit court.

- (a) Where the main drainage district, of which the proposed subdistrict is to become a part, shall have been organized by a circuit court, the petition for the proposed subdistrict shall be presented to the circuit court and all subsequent proceedings had therein.
- (b) Where the main drainage district, of which the proposed subdistrict shall embrace lands lying in another, or other counties, the petition for the organization of the proposed subdistrict shall be filed in the circuit court of the county in which the main district was organized and all subsequent proceedings shall be had in the circuit court.

**History.** Acts 1913, No. 177, § 19; § 3151; Pope's Dig., § 4502; A.S.A. 1947, 1917, No. 270, § 1, p. 1446; C. & M. Dig., § 21-510.

## 14-121-504. Commissioners — Subsequent proceedings.

When the county or circuit court has established a subdistrict, it shall appoint the commissioners of the main district of which the subdistrict is to become a part to act as commissioners of the subdistrict, and the proceedings thereafter shall conform to the provision of this act relating to drainage districts.

**History.** Acts 1913, No. 177, § 19; 1917, No. 270, § 1, p. 1446; C. & M. Dig., § 3151; Pope's Dig., § 4502; A.S.A. 1947, § 21-510.

Meaning of "this act". See note to § 14-121-502.

### **CASE NOTES**

### Authority.

The commissioners of a drainage district have no authority to do anything not authorized by the act creating the district, but the commissioners of a subdistrict

derive their authority from the general law and not from the special act. Shewmake v. Hudson, 171 Ark. 739, 285 S.W. 382 (1926).

## 14-121-505. Authority to do construction for land reclamation.

A subdistrict of a drainage district organized under, or made subject to, §§ 14-121-101, 14-121-102, 14-121-104, 14-121-105, 14-121-201 — 14-121-205, 14-121-207, 14-121-301, 14-121-304, 14-121-305, 14-121-307, 14-121-310, 14-121-311, 14-121-313, 14-121-401 — 14-121-406, 14-121-408, 14-121-411, 14-121-412, 14-121-422 — 14-121-432, 14-121-440 — 14-121-442, 14-121-802 — 14-121-805, and 14-121-808 may reconstruct, repair, enlarge, straighten, extend, and improve ditches, drains, levees, sluiceways, flood gates, and any and all other construction work of the original district for the reclamation of wet and overflowed land, as a part of the system of improvements of the subdistrict, provided the work shall be done at the expense of the subdistrict.

**History.** Acts 1959, No. 153, § 1; A.S.A. 1947, § 21-586.

# Subchapter 6 — Forming Maintenance Districts Within Original Districts

SECTION.
14-121-601. Scope.
14-121-602. Definition.
14-121-603. Dividing district land according to county boundaries.
14-121-604. Filing petition for separation

- Order.

SECTION.
14-121-605. Commissioners of separate districts.

14-121-606. Commissioners of original district.

14-121-607. Powers of separate districts.

Effective Dates. Acts 1947, No. 371, § 8: Mar. 28, 1947. Emergency clause provided: "This act being necessary to simplify and clarify laws regarding drainage districts thereby better protecting the interest of taxpayers residing in said dis-

tricts, it is hereby declared that an emergency exists and this act, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force from and after its passage and approval."

## 14-121-601. Scope.

The terms and provisions of this subchapter shall never at any time be applicable to a drainage district organized under the general drainage laws of this state for the primary purpose of constructing levees and other flood control projects under the terms and provisions of the Flood Control Acts of Congress, approved May 15, 1928, and June 15, 1936, and any amendments thereto, and all districts organized as aforesaid are exempt from the provisions of this subchapter.

**History.** Acts 1947, No. 371, § 6; A.S.A. 1947, § 21-582.

U.S. Code. The Flood Control Acts of Congress are codified primarily as 33 U.S.C. § 701 et seq.

The Flood Control Act of Congress approved May 15, 1928, referred to in this section, is codified as 33 U.S.C. §§ 702a,

702b-702d, 702e-702g, 702h-702j, 702k, 702l, 702m, and 704.

The Flood Control Act of Congress approved June 15, 1936, referred to in this section, is codified as 33 U.S.C. §§ 702a-1, 702a-2 — 702a-11, 702g-1, 702j-1, 702j-2, 702k-1, and 702k-2.

### 14-121-602. Definition.

Throughout this subchapter, unless the context otherwise requires, "original district" includes the district which was first created in the circuit court and all subdistricts within and appurtenant to that district.

**History.** Acts 1947, No. 371, § 2; A.S.A. 1947, § 21-578.

# 14-121-603. Dividing district land according to county boundaries.

Any drainage district in this state not organized for the primary purpose of constructing levees and receiving federal aid under Flood Control Acts of Congress, approved May 15, 1928, and June 15, 1936, and amendments thereto, comprising lands in more than one (1) county and organized under the provisions of the general drainage laws which have no outstanding unpaid bonds or other evidences of indebtedness may be divided into separate districts comprising the lands in each county of the original district for the purpose of preserving the drainage system, of keeping the ditches clear from obstructions and of extending, widening, or deepening the ditches from time to time as may be found advantageous to the lands in the separate district or districts, as provided in this subchapter.

**History.** Acts 1947, No. 371, § 1; ferred to in this section, see note to § 14-A.S.A. 1947, § 21-577.

U.S. Code. For Flood Control Acts, re-

### CASE NOTES

ANALYSIS

Notice. Withdrawal of counties.

### Notice.

Statutory publication of notice of hearing on tax levies against all the lands in an original, established drainage district is not defective for failure to describe each parcel of land in the district or the boundaries of the district. Tri-County Drainage Dist. v. Morrison, 227 Ark. 29, 295 S.W.2d 781 (1956).

### Withdrawal of Counties.

Attorney's and engineer's fees are not such indebtedness of a drainage district as would prevent a county from withdrawing from the district. Tri-County Drainage Dist. v. Morrison, 227 Ark. 29, 295 S.W.2d 781 (1956).

The commissioners of an original drainage district from which several counties

have withdrawn are the proper parties to initiate court action for levy of taxes against the lands of all the counties in the original district for the purpose of preserving the established drainage system and keeping the ditches clear from obstructions. Tri-County Drainage Dist. v. Morrison, 227 Ark. 29, 295 S.W.2d 781 (1956).

While a drainage district from which counties have withdrawn retains the power to seek tax levy on the withdrawn counties pro rata to "clean out" and maintain the established drainage system, a reasonable latitude of discretion and judgment is allowed the drainage commissioners and courts to determine what is maintenance of the system as opposed to the extension thereof. Tri-County Drainage Dist. v. Morrison, 227 Ark. 29, 295 S.W.2d 781 (1956).

## 14-121-604. Filing petition for separation — Order.

(a) Any five (5) owners of land within the boundaries of the original district may file a petition in the circuit court of the county in which the district was originally organized, setting forth the fact that:

(1) The improvement for which the district was originally organized

has been completed;

(2) The district comprises lands in more than one (1) county, that all obligations of the district have been paid in full, that the drainage district was not organized primarily for the construction of levees and has not received federal aid under Flood Control Acts of Congress approved May 15, 1928, and June 15, 1936, and amendments thereto, and praying that the lands in the county mentioned in the petition be separated from the original district for the purposes set forth in § 14-121-603.

(b) If the circuit court in which the petition is filed shall find the facts set forth in the petition to be true, the court shall enter an order granting the prayer of the petition for the purposes of this subchapter.

(c) Upon the filing of a certified copy of the order in the county court of the county set forth in the petition, the county court shall thereupon enter an order establishing a separate district which shall be named in the order and which shall comprise the lands in the county which were included in the district as originally organized.

**History.** Acts 1947, No. 371, § 3; A.S.A. 1947, § 21-579.

U.S. Code. For Flood Control Acts, re-

ferred to in this section, see note to § 14-121-601.

### CASE NOTES

Fees.

Attorney's and engineer's fees are not such indebtedness of a drainage district as would prevent a county from withdrawing from the district. Tri-County Drainage Dist. v. Morrison, 227 Ark. 29, 295 S.W.2d 781 (1956).

## 14-121-605. Commissioners of separate districts.

(a) The county court shall appoint three (3) owners of real property within the boundaries of the separate district as commissioners thereof.

(b) Each commissioner shall take the oath of office required by Arkansas Constitution, Article 19, § 20, and shall also swear that he will not be directly or indirectly interested in any contract made by the board.

(c) Any commissioner failing to take the oath within thirty (30) days after his appointment shall be deemed to have declined to act, and his

place shall be filled by the county court of that county.

(d) All vacancies on the board shall be filled by the county court, or the judge thereof in vacation, but if a majority in value of the owners of real property in the subdistrict shall petition for the appointment of a particular person or persons as commissioners, it shall be the duty of the county court to appoint the person or persons so designated.

(e) The board shall select one (1) of their number as chairman, and a

majority shall constitute a quorum.

(f) The county court shall remove any member of the board on petition of a majority in value of the owners of real property in the district.

**History.** Acts 1947, No. 371, § 4; A.S.A. 1947, § 21-580.

## 14-121-606. Commissioners of original district.

When the order has been entered by the county court and the commissioners have qualified as such under provisions of this subchapter, the lands in each county shall no longer be a part of the district as originally organized, and the power of the original district and the commissioners thereof to levy a tax on the lands in the county so separated from the original districts for the purposes provided in § 14-121-412 or for any other purposes shall terminate, but their authority as to all other lands located in the original district shall not be thereby affected.

**History.** Acts 1947, No. 371, § 5; A.S.A. 1947, § 21-581.

## 14-121-607. Powers of separate districts.

The separate districts shall have the power to preserve the portion of the drainage system located in the county as provided in § 14-121-412 in the same manner as if the separate district had originally been organized under the laws of Arkansas as a drainage district comprising lands in one (1) county. However, the circuit court in which the original district was organized shall have authority to cause to be levied and collected a tax on all the lands of the original district for the purpose of paying the expenses incident to the cleaning out, but not for the purpose of extending, widening, or deepening existing ditches so as to provide an adequate outlet for the entire drainage system of the original district.

**History.** Acts 1947, No. 371, § 5; A.S.A. 1947, § 21-581.

### **CASE NOTES**

ANALYSIS

Assessments.
Withdrawal of counties.

### Assessments.

Assessments of drainage district properly and lawfully made do not constitute a cloud on the title to the land involved even though the money collected is used for an unlawful purpose. Park Corp. v. Tri-County Drainage Dist., 226 Ark. 357, 290 S.W.2d 18 (1956).

Circuit court in which original district was created had the authority to cause assessments and taxes to be levied for purpose of cleaning out existing ditches lying in county in which new district created was situated even though the county in which the new district lay was in a different judicial district from that of court in which original district was formed. Park Corp. v. Tri-County Drainage Dist., 226 Ark. 357, 290 S.W.2d 18 (1956).

Where original district created lay in three counties and new district was created lying in one of the counties of the original district, property owners in the new district could be assessed by both the original district and the new district for clearing out ditches existing at the time of the creation of the new district. Park

Corp. v. Tri-County Drainage Dist., 226 Ark. 357, 290 S.W.2d 18 (1956).

### Withdrawal of Counties.

Attorney's and engineer's fees are not such indebtedness of a drainage district as would prevent a county from withdrawing from the district. Tri-County Drainage Dist. v. Morrison, 227 Ark. 29, 295 S.W.2d 781 (1956).

The commissioners of an original drainage district from which several counties have withdrawn are the proper parties to initiate court action for levy of taxes against the lands of all the counties in the original district for the purpose of preserving the established drainage system and keeping the ditches clear from obstructions. Tri-County Drainage Dist. v. Morrison, 227 Ark. 29, 295 S.W.2d 781 (1956).

While a drainage district from which counties have withdrawn retains the power to seek tax levy on the withdrawn counties pro rata to "clean out" and maintain the established drainage system, a reasonable latitude of discretion and judgment is allowed the drainage commissioners and courts to determine what is maintenance of the system as opposed to the extension thereof. Tri-County Drainage Dist. v. Morrison, 227 Ark. 29, 295 S.W.2d 781 (1956).

### SUBCHAPTER 7 — ANNEXING CERTAIN BENEFITED LANDS TO DISTRICT

SECTION.

14-121-701. Lands to be annexed.

14-121-702. Addition of sanitary sewer district — Taxes and

bonds.

14-121-703. Annexation procedure.

SECTION.

14-121-704. Assessment or reassessment of benefits.

14-121-705. Use of increased revenues.

14-121-706. Legal proceedings.

Preambles. Acts 1927, No. 180 contained a preamble which read: "Whereas, into the ditches of some drainage districts of the state, after the ditches were completed, other lands have been drained by digging private ditches, thereby draining sloughs, marshes and lakes that could not otherwise be drained; and

"Whereas, in certain instances, sanitary sewer lines have made use of such drainage ditches to procure an emptying outlet, thereby saving the sanitary sewer district large sums of money; and

"Whereas, it is right and just that such lands as make use of and are benefited by such drainage ditches of any such drainage districts should stand their just portion of the costs of the construction and maintenance of such drainage ditches in proportion to the benefits received;

"Therefore...."

### 14-121-701. Lands to be annexed.

Where any slough, marsh, or lake has been drained into the drainage ditches of any drainage district which has completed its work of construction, lands benefited by the draining of the slough, marsh, or lake may be added to the drainage district in the manner provided by § 14-121-703, but in no case shall lands paying taxes in another drainage district be added to any drainage district under the provisions of this subchapter, and in no case shall lands, lots, or blocks already in a drainage district be in any way affected by the provisions of this subchapter.

**History.** Acts 1927, No. 180, § 1; Pope's Dig., § 4530; A.S.A. 1947, § 21-534.

### CASE NOTES

ANALYSIS

Purpose. Applicability.

Purpose.

The purpose of this section is to prevent owners of sewer lines, sloughs, marshes, and lakes from making use of drainage district's improvements without just compensation. Pendleton v. Stuttgart & King's Bayou Drainage & Irrigation Dist., 235 Ark. 513, 360 S.W.2d 750 (1962).

This section requires affirmative action by the owners of the outside lands before annexation into a drainage district can be granted. The preamble to the act which enacted this section unequivocally recites that the purpose of the act is to provide equitable relief to drainage districts when owners of lands outside the district dig private ditches to drain their lowlands into the district. Mayberry Drainage Dist. v. Graham, 289 Ark. 156, 711 S.W.2d 147 (1986).

Applicability.

This section applies only to lands added to a district existing under the provisions of this subchapter and does not apply to districts formed under the provisions of other acts. Pendleton v. Stuttgart & King's Bayou Drainage & Irrigation Dist., 235 Ark. 513, 360 S.W.2d 750 (1962).

Cited: Williams v. Village Creek, White River & Mayberry Levee & Drainage Dist., 285 Ark. 194, 685 S.W.2d 797 (1985).

## 14-121-702. Addition of sanitary sewer district — Taxes and bonds.

(a) If any sanitary sewer district drains into the ditches or conduits of any drainage district which has completed its work of construction, or if private or other public sanitary sewers drain into the ditches or conduits, the lands within the sanitary sewer district or the lands served by those private or other public sewers may be added to the

drainage district in the manner provided in § 14-121-703.

(b) If lands, lots, or blocks served by sanitary sewers are added to the drainage district, they shall not be taxed exceeding an average of fifty cents (50¢) per year for each lot or parcel of land fifty feet by one hundred fifty feet (50′ x 150′), and more or less for larger or smaller tracts or parcels of land. It is ascertained that the average benefits to the lands, lots, or parcels derived from the sanitary sewer drainage will not exceed that sum.

(c) The commissioners of any drainage district, with the consent of the chancery court in which the lands of the district are located, shall have the right to sell additional bonds for the purpose of cleaning, widening, deepening, and completing necessary ditches for the proper drainage of the district.

**History.** Acts 1927, No. 180, § 2; Pope's Dig., § 4531; A.S.A. 1947, § 21-535.

## 14-121-703. Annexation procedure.

(a) When the commissioners of any such drainage district find that lands, lots, or blocks such as are described in §§ 14-121-701 and 14-121-702 of this subchapter have been benefited by the connection established with the drainage ditches or conduits of the district, they shall file with the clerk of the chancery court of the county where the lands lie a petition setting forth the reasons why the lands, lots, or blocks should be annexed to the drainage district and praying for their annexation.

(b) Thereupon, it shall be the duty of the clerk of the court to publish once a week for two (2) weeks in some newspaper issued and having a bona fide circulation in the county a notice in substantially the

following form:

..... DRAINAGE DISTRICT

 blocks (here will follow a description of the lands, lots, and blocks sought to be annexed) have been benefited by connections made with the drainage ditches or conduits of said district and praying that such lands, lots, and blocks be annexed to said district; and all persons interested are warned to appear in said court on the .... day of ....., 19 .... and show cause for or against the proposed annexation.

...... Chancery Clerk"

(c) On the day named in the notice or as soon thereafter as the business of the court will permit, the court shall hear all persons who wish to be heard on the question of whether the lands, lots, or blocks shall be annexed to the drainage district, and it shall enter its decree which shall be conclusive unless an appeal therefrom is taken and perfected within thirty (30) days.

(d) If it makes an order annexing the territory, the annexed territory

shall constitute a part of the drainage district.

**History.** Acts 1927, No. 180, § 3; Pope's Dig., § 4532; A.S.A. 1947, § 21-536.

### CASE NOTES

### Petition.

This section provides a method for annexing lowlands to a drainage district where the improvements have been completed and where the owners of the lands to be annexed have taken some affirmative action to drain sloughs, marshes, or lakes into the completed improvement; thus, where the annexation petition filed

by the drainage district did not contain an allegation of affirmative action by the owners of the lands to be annexed, no cause of action had been stated. Mayberry Drainage Dist. v. Graham, 289 Ark. 156, 711 S.W.2d 147 (1986).

Cited: Williams v. Village Creek, White River & Mayberry Levee & Drainage Dist., 285 Ark. 194, 685 S.W.2d 797 (1985).

## 14-121-704. Assessment or reassessment of benefits.

(a) When lands have been annexed, the assessor of the drainage district shall proceed to assess the benefits in the annexed territory.

(b) Where there are no assessors, the board of commissioners shall

act as assessors.

(c) The benefits shall be assessed, advertised, and equalized in the manner provided in §§ 14-121-402, 14-121-404, and 14-121-405, and appeals from the proceedings confirming the assessment must be taken within the time therein provided.

(d) If the commissioners of that drainage district deem it best, they may have a reassessment of all the benefits in the entire district, so as to equalize the burden, which reassessment shall be made, advertised,

and equalized as above provided.

**History.** Acts 1927, No. 180, § 4; Pope's Dig., § 4533; A.S.A. 1947, § 21-537.

Cross References. Reassessment of benefits, § 14-120-108.

SECTION.

### **CASE NOTES**

Cited: Williams v. Village Creek, White River & Mayberry Levee & Drainage Dist., 285 Ark. 194, 685 S.W.2d 797 (1985).

### 14-121-705. Use of increased revenues.

Any increased revenues by reason of the annexes to a district together with any other revenues of any district not required for bonds and interest payments may be used by the commissioners for the purpose of cleaning, widening, deepening, or maintaining the drainage ditches of the districts.

**History.** Acts 1927, No. 180, § 5; Pope's Dig., § 4534; A.S.A. 1947, § 21-538.

## 14-121-706. Legal proceedings.

All proceedings brought under this subchapter and all suits to enjoin such proceedings or questioning the assessment of benefits had hereunder shall be deemed matters of public interest and shall be disposed of at the earliest possible moment. Appeals therefrom must be taken and perfected within thirty (30) days.

**History.** Acts 1927, No. 180, § 6; Pope's Dig., § 4535; A.S.A. 1947, § 21-539.

## Subchapter 8 — Construction and Maintenance Generally

14-121-801. Cooperation with the United States.
14-121-802. Contractor's bond.
14-121-803. Right to pass over land — Commissioners, engineers, and contractors.
14-121-804. Landowner ditches draining into public ditches — Crossing lands of another.
14-121-805. Ditches across or under highways, railroads, or bridges.
14-121-806. District duty to build high-

way bridges over ditches.
14-121-807. Regulations for district fences, bridges, etc.

SECTION.

14-121-808. Construction of ditches beyond district limits.

14-121-809. Construction, reconstruction, replacement, and repair of certain levees and setbacks.

14-121-810. Ownership of timber on right-of-way.

14-121-811. Authority to obtain and dispose of maintenance equipment — Personnel — Tax.

Effective Dates. Acts 1909, No. 279, § 35: effective on passage.

Acts 1913, No. 177, § 22: approved Mar. 13, 1913. Emergency declared.

Acts 1945, No. 213, § 3: approved Mar. 20, 1945. Emergency clause provided: "Whereas certain drainage districts located within the State of Arkansas and

organized under special acts have very rich and fertile lands, a great many acres of which cannot be used on account of the obstructions existing in the lower end of the drainage ditches and, not having proper outlet, the lands cannot be put into cultivation on account of the overflow and destruction of the crops:

"And whereas the said government has agreed to give aid to certain districts and to reconstruct, repair and replace certain levees and setbacks within the districts and to remove the obstructions in the drainage ditches and thus secure a better outlet for said ditches, so that these rich lands can be immediately put into cultivation and thus grow the crops that are so vitally needed at this time, and unless these districts shall have the above authority to maintain the levees and keep the outlets open, such federal aid will not be given, and the lands cannot be cultivated: an emergency is, therefore, declared to exist, and the passage of this act and the adoption of this emergency clause is necessary for the public health and safety, and this act shall be in full force and effect immediately from and after the day of its passage."

Acts 1947, No. 95, § 3: Feb. 18, 1947. Emergency clause provided: "Whereas, much valuable land located within drainage districts is now subject to flooding from excessive rains, thereby rendering cultivation of such land impossible, an emergency is declared to exist and this act shall be in effect from and after its pas-

sage and approval."

Acts 1947, No. 124, § 4: Feb. 26, 1947. Emergency clause provided: "Whereas certain drainage districts located within the State of Arkansas have very rich and fertile lands, subject to flooding from excessive rains, many acres of which cannot be placed in cultivation on account of inadequate drainage, and insufficient outlet; and the cost of deepening, widening, clearing of obstructions, making cutoffs, and providing an outlet is prohibitive to the landowners;

"And whereas the Federal Government is authorized by an Act of Congress to do drainage improvement work in aid of Flood Control and Drainage in certain areas, which will result in making thousands of acres of land available to habitation and cultivation, improve drainage and increase production of all agricultural

products, permit the building of roads, improve health of the people, be an aid to school attendance by children living in said areas, and promote the general welfare, an emergency is therefore declared to exist, and the passage of this act and the adoption of this emergency clause is necessary for the public health and safety, and this act shall be in effect from and

after its passage and approval."

Acts 1967, No. 206, § 3: Mar. 6, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that guidelines have not been established by law for defining what constitutes compensation to be paid personnel employed by a drainage district; that there is great chaos, confusion and uncertainty as to what compensation is to be paid such employees; and that in order to clarify this situation and to insure the employees of such districts of a fair wage, it is necessary that this act become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1969, No. 27, § 3: Feb. 4, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the requirement that the board of commissioners of a drainage district retain 20% of the compensation for work done by a contractor until the contract is completed is unduly restrictive; that many drainage district boards have been retaining only 10% of the estimated work as construction has progressed rather than 20%; that there is immediate need for legislation to remove this unduly restrictive requirement in order that public contractors not be unduly oppressed by the greater amount of retainage, and in order that public works be bid at the lowest possible prices and completed as expeditiously as possible. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval."

Acts 1995, No. 343, § 9: Feb. 16, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that Drainage Improvement Districts should be authorized to levy their assessments as a flat tax per acre; that the statutes do not specifically now authorize such; that such authority should be granted immediately; and this act will grant that authority. Therefore, an emer-

gency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

## 14-121-801. Cooperation with the United States.

(a) All drainage districts organized under the laws of Arkansas, within whose boundaries the federal government has been, or shall hereafter be, authorized to do improvement work in aid of drainage and flood control, pursuant to an act of Congress, whereby the ditches and drains are to be cleared of obstructions, deepened, widened, and repaired, and the natural drains within a district are to be improved by clearing, dredging, or making cutoffs therein, are authorized to cooperate with the Department of Defense of the United States or other federal agency by permitting the work to be done in the district, and by furnishing any right-of-way necessary for the drainage improvement, for which purpose the districts shall have the right of eminent domain in accordance with §§ 18-15-1001 — 18-15-1011, and amendments thereto.

(b)(1) Any drainage district shall have the further right and authority to give assurance to the federal government that it will maintain and keep in proper repair any ditch or drain which may be widened, deepened, cleared of obstructions, improved, or repaired within the district by the federal government acting through the United States Army Corps of Engineers or other agency, pursuant to an act of Congress of the United States in aid of flood control and drainage, and to agree to save and hold harmless the federal government from any

liability or damages due to the construction of the works.

(2) Where the plans for the proposed improvement cover and include an area in which more than one (1) drainage district is located, and all of the included districts are part of one (1) comprehensive plan in the same drainage basin, then the districts in the affected area are authorized to form a permanent committee, composed of one (1) member from each of the districts, who shall be elected by the commissioners of each district, who may or may not be a commissioner, for the purpose of facilitating compliance with the regulations of the Secretary of Defense or other federal agency with reference to procuring all necessary commitments and assurances from the respective drainage districts, obtaining rights-of-way for the project, and as to inspections and maintenance of drainage and flood control works when completed by the federal government.

(3) The committee may employ a competent person to coordinate and perform the work and such clerical help as it deems necessary for the

purpose.

(4) The expense thereof shall be considered as maintenance costs, which shall be paid by, and apportioned among, the districts in such

areas on the basis of the total acreage in the districts in a fair and equitable manner.

(5) The cost of maintaining ditches and drains or drainage structures of each district after completion of the work by the federal government shall be borne wholly by the district in which the work is done.

(6)(A) For the purpose of carrying out all of the provisions of this section, districts are authorized to levy a maintenance tax, and obtain

funds, as now provided by law.

(B) The tax may be levied as a flat tax per acre.

(7) In areas where all of the lands involved are situated within a levee district, the levee district may participate in the committee herein authorized to be formed on a basis which its commissioners deem to be fair and equitable.

(c) This section is supplemental and does not repeal any existing

drainage law.

**History.** Acts 1947, No. 124, §§ 1-3; 1949, No. 84, § 1; A.S.A. 1947, §§ 21-572 — 21-574; Acts 1995, No. 343, § 3.

Amendments. The 1995 amendment made a stylistic change in (b)(6)(A); and added (b)(6)(B).

### **CASE NOTES**

Authority.

Where levee was constructed by federal government in 1938, landowners of drainage district where the levee was located could not in 1949 maintain that levee was illegally constructed, since levee district

had such authority under this section and § 14-121-809 and levee was an integral part of the drainage district. Owen v. Central Clay Drainage Dist., 216 Ark. 159, 224 S.W.2d 529 (1949).

## 14-121-802. Contractor's bond.

All contractors shall be required to give bond for the faithful performance of the contracts awarded them, with good and sufficient securities, in an amount to be fixed by the board. The board shall not remit or excuse the penalty or forfeiture of the bond or the breaches thereof.

**History.** Acts 1909, No. 279, § 14, p. 829; C. & M. Dig., § 3622; Pope's Dig., § 4473; Acts 1969, No. 27, § 1; A.S.A. 1947, § 21-524.

Cross References. Public contractors' bonds, § 22-9-401 et seq.

### CASE NOTES

Construction.

The bond of a contractor for the construction of ditches in a drainage district is in the nature of a contract of insurance and should be most strongly construed against the surety. Union Indem. Co. v. Forgey, 174 Ark. 1110, 298 S.W. 1032 (1927).

# 14-121-803. Right to pass over land — Commissioners, engineers, and contractors.

- (a) The commissioners, engineers, and contractors engaged in drainage work shall have the right to pass, with their equipment, over all the lands of the district, being liable to the owner for any damage done thereto.
- (b) Any owner who shall prevent the passage over his land shall be guilty of a misdemeanor and fined one hundred dollars (\$100) for each day that he prevents the passage.

**History.** Acts 1909, No. 279, § 33, p. 829; C. & M. Dig., § 3653; Pope's Dig., § 4504; A.S.A. 1947, § 21-525.

**Cross References.** Destroyed section corners to be relocated, § 14-86-501 et seq.

# 14-121-804. Landowner ditches draining into public ditches — Crossing lands of another.

(a) Any landowner within the district may build ditches to drain his

lands into the public ditches.

(b) If any intervening landowner should refuse permission to cross his lands with such ditch, the landowner seeking to construct the ditch may, by proceedings in the circuit court to be conducted in the same manner as condemnation proceedings instituted by railroad, telegraph, and telephone companies, condemn a right-of-way for the ditch.

(c) In those proceedings, the jury shall deduct from the damages the benefits that will accrue to the intervening landowner by the construction of the ditch, and the intervening landowner shall have the right to

use the ditch for the drainage of his own lands.

**History.** Acts 1909, No. 279, § 19, p. 829; C. & M. Dig., § 3627; Pope's Dig., § 4478; A.S.A. 1947, § 21-527.

Cross References. Condemnation proceedings by railroad, telegraph, and telephone companies, § 18-15-1201 et seq.

# 14-121-805. Ditches across or under highways, railroads, or bridges.

(a) The commissioners shall have the right to carry the ditches

across any highway.

(b) Ditches may also be carried under or through any railroad track or tramway, and the owner thereof shall have no claim for damages on that account but shall bridge the ditch at its own expense.

**History.** Acts 1909, No. 279, § 28, p. 829; C. & M. Dig., § 3648; Pope's Dig., § 4499; A.S.A. 1947, § 21-528.

Cross References. Agreement with State Highway Commission, § 14-120-219.

### CASE NOTES

Duty to Bridge.

It is the duty of a railroad company to build, at its own expense, the crossing over a ditch carried under or through its track. Hahn & Carter v. Gould S.W. Ry., 113 Ark. 537, 168 S.W. 1064 (1914).

## 14-121-806. District duty to build highway bridges over ditches.

The district shall build bridges to carry the county highways over the ditches dug by it.

**History.** Acts 1913, No. 177, § 16; C. & M. Dig., § 3648; Pope's Dig., § 4499; A.S.A. 1947, § 21-529.

## 14-121-807. Regulations for district fences, bridges, etc.

(a) In order to prevent damages to drainage systems and to secure the best results from their construction, the board of commissioners of any district may:

(1) Make regulations for and may prescribe the manner of building

fences and bridges across any ditch or other construction; and

(2) Prescribe the manner in which branch ditches or tile lines shall enter the ditches of the district, and the means by which crossings shall be made over levees.

- (b) The construction of any fences, bridges, or other construction and the digging of any lateral ditches into the ditches of the district in a manner contrary to that specified by the commissioners shall be a misdemeanor, punishable by a fine of not to exceed one hundred dollars (\$100).
- (c) The commissioners shall have authority to enforce the regulations and may remove any construction or may close any opening improperly made.

**History.** Acts 1913, No. 177, § 7; C. & M. Dig., § 3640; Pope's Dig., § 4491; A.S.A. 1947, § 21-530.

## 14-121-808. Construction of ditches beyond district limits.

- (a) In case it is necessary to do so in order to obtain a proper outlet for the drainage system or otherwise to perfect the system of improvements, the commissioners may construct ditches or do other work on land beyond the jurisdiction of the county court or which for other reasons cannot be included in the district, so as to secure the object of the improvement.
- (b) In that event, they shall have the right to condemn a right-of-way for that drain or other construction.
- (c) The proceedings for the right-of-way shall be the same that are now provided by law for the condemnation of the rights-of-way for railroads, telegraphs, and telephones.
- (d) The ditch or drain beyond the limits of the districts shall be the property of the district, and no person, corporation, or other drainage district not assessed shall have the right to dig any lateral drain connecting therewith without paying compensation to be fixed by the circuit court.

**History.** Acts 1909, No. 279, § 21, p. 829; 1913, No. 177, § 4; C. & M. Dig., § 3629; Pope's Dig., § 4480; A.S.A. 1947, § 21-532.

**Cross References.** Condemnation by railroads, telegraph, and telephone companies, § 18-15-1201 et seq.

#### **CASE NOTES**

ANALYSIS

Authority. Damages.

Authority.

It is no objection to the legality of a drainage district that a canal was to be built outside the boundaries of the district to divert waters from the district. O'Kane v. McLean Bottom Levee & Drainage Dist., 211 Ark. 938, 203 S.W.2d 392 (1947).

Damages.

Owners of land adjoining drainage ditch

could not recover for damages to crops caused by poison used by drainage district to kill willows growing on the drainage ditch right-of-way which drifted through the air and came in contact with some of the crops being grown by plaintiffs, since the crops were not damaged for public use, the principles of eminent domain were not applicable, and an improvement district is not liable in tort. St. Francis Drainage Dist. v. Austin, 227 Ark. 167, 296 S.W.2d 668 (1957).

# 14-121-809. Construction, reconstruction, replacement, and repair of certain levees and setbacks.

(a) All drainage districts organized under special acts of the General Assembly are given authority to construct, reconstruct, repair, and replace levees and to construct setbacks abutting drainage ditches whenever deemed necessary and proper by the board of directors of the district for the benefit of the lands of the district in securing better drainage for those lands and preventing overflows and destruction of the crops and the erosion of lands within the district. They are given the power of eminent domain over such lands as may be necessary for the purpose.

(b) The drainage districts shall have a further right and authority to obligate the district to maintain and keep in proper repair any levees which may be constructed, reconstructed, repaired, or replaced within the district by the federal government for the benefit of the lands within the district and to further obligate the district to keep its drainage

ditches and their outlets free of obstructions.

**History.** Acts 1945, No. 213, §§ 1, 2; A.S.A. 1947, §§ 21-570, 21-571.

# 14-121-810. Ownership of timber on right-of-way.

In case the right-of-way for the improvement is through timber, the ownership of the timber shall pass to the district with the control of the right-of-way, and the board of commissioners may use or dispose of the timber as they deem best.

**History.** Acts 1913, No. 177, § 9; C. & M. Dig., § 3642; Pope's Dig., § 4493; A.S.A. 1947, § 21-522.

# 14-121-811. Authority to obtain and dispose of maintenance equipment — Personnel — Tax.

(a)(1) Boards of commissioners of drainage districts organized under the laws of Arkansas are authorized upon petition of the majority of the property owners in their districts, or upon petition of the owners of the majority of the property in their district, to purchase, lease, or rent, separately as individual districts or jointly with other districts, machinery, equipment, and material to be used in repairing, deepening, widening, and clearing the ditches of their districts.

(2) The commissioners are further authorized to employ and fix the compensation to be paid such personnel as may be necessary and incidental for the use of the machinery, equipment, and material

obtained.

(3)(A) For the purpose of carrying out the provisions of this section, the drainage districts are authorized to levy a maintenance tax and obtain funds as now provided by law.

(B) The tax may be levied as a flat tax per acre.

(4) Commissioners are further authorized to sell or lease machinery, equipment, or material purchased under the provisions of this section, the proceeds of the sale or lease to be deposited to the credit of the district's maintenance fund in the established depository of the district.

(b) As used in this section, unless the context otherwise requires, "compensation" means all salaries, hourly wages, retirement allowances, group insurance, medical benefits, and anything else of value that the district provides in return for work done by the personnel.

(c) This section is supplemental and does not repeal any existing

drainage law.

**History.** Acts 1947, No. 95, §§ 1, 2; 1967, No. 206, §§ 1, 2; A.S.A. 1947, §§ 21-575, 21-576; Acts 1995, No. 343, § 4.

Amendments. The 1995 amendment added (a)(3)(B).

#### **CASE NOTES**

ANALYSIS

Borrowing money. Purchase, etc., of equipment.

Borrowing Money.

Recourse must necessarily be had to the general law regulating procedure by districts for the exercise of the power granted in this section and for the procedure as to notice, hearings, determination of the majority, and authorization for borrowing money. Cherry v. Cousart Bayou Drainage Dist., 222 Ark. 404, 259 S.W.2d 513 (1953).

The authority to purchase a dragline costing \$45,000 and the issuing of bonds therefor was affirmed where the district had money on hand to pay existing bonds and unused benefits in excess of \$500,000. Cherry v. Cousart Bayou Drainage Dist., 222 Ark. 404, 259 S.W.2d 513 (1953).

Purchase, Etc., of Equipment.

Where a majority in acreage of the property owners in a drainage district signed petition asking for the cleaning out of ditch, the district had right to purchase equipment to be used on the work. Halsell

v. Drainage Dist. No. 17, 216 Ark. 746, 227 S.W.2d 136 (1950).

#### Subchapter 9 — Cleaning Public Drains

SECTION. 14-121-901. Board.

14-121-902. Treasurers to keep separate account with drainage dis-

trict.

SECTION.

14-121-903. Unpaid amounts considered in making estimate - Ex-

tension of overdue

amounts.

Effective Dates. Acts 1907, No. 314, § 6: effective on passage.

#### 14-121-901. Board.

For the purpose of keeping a small cash fund on hand with which to clean out the public drains of this state, the county judge, county clerk, and sheriff of each county of this state wherein are located any public drains shall be and compose a board, of which the county judge shall be president and the county clerk shall be secretary, whose duty it shall be to ascertain the amount necessary to keep each public drain in their respective counties clean for the next ensuing year and certify the amount to the several quorum courts of the counties at the regular sessions of the courts for the levying of other taxes. It shall then be the duty of the levying court to levy the amount so certified as other taxes are levied, which amount so levied shall be by the county clerk extended as taxes against the lands assessed for the construction of each public drain in the same proportion as the land was originally assessed for the construction of the ditch, and when extended the amount shall be a lien upon the land. The land shall be subject to sale for the nonpayment of the incidental ditch tax and be sold in default of the payment of the tax as in cases of other delinquent taxes.

History. Acts 1907, No. 314, § 1, p. 746; C. & M. Dig., § 3657; Pope's Dig., § 4508; A.S.A. 1947, § 21-401.

### 14-121-902. Treasurers to keep separate account with drainage district.

The county treasurers of this state shall keep upon their books a separate account with each public drainage district of their county, and no money collected under the provisions of § 14-121-901 shall be paid out only for the purpose of keeping clean the particular public ditch for which it was collected.

**History.** Acts 1907, No. 314, § 2, p. 746; C. & M. Dig., § 3658; Pope's Dig., § 4509; A.S.A. 1947, § 21-402.

# 14-121-903. Unpaid amounts considered in making estimate — Extension of overdue amounts.

- (a) Whenever there shall remain due and unpaid at the date of the passage of this act any amounts for labor performed in cleaning out any of the public drains of this state, it shall be the duty of the board provided for in this act to take these amounts into consideration in making their estimates of the expenses of keeping the drains clean for the ensuing year. These amounts shall be paid out of the money arising from the amount certified by the board and collected as provided in § 14-121-901.
- (b) Where fees have already been paid by the owner of any particular tract of land subject to the tax, no further amount shall be assessed against the land. The amount provided for in this section shall only be extended against the land as has not already been paid on. The county clerk, in extending the overdue amount, shall only extend the amount against the land as has not been previously paid, which amount shall be in addition to the land's share of the necessary amount to keep the drain clean for the ensuing year.

**History.** Acts 1907, No. 314, § 4, p. 746; C. & M. Dig., § 3660; Pope's Dig., § 4511; A.S.A. 1947, § 21-404.

Publisher's Notes. In reference to the

term "passage of this act," Acts 1907, No. 314, was signed by the Governor and became effective on May 13, 1907.

## Subchapter 10 — Dissolution or Abolition of Districts

SECTION. SECTION. 14-121-1001. Applicability. 14-121-1007. Partial continuance. 14-121-1002. Filing petition. 14-121-1008. Indebtedness of dissolved districts - Levy and col-14-121-1003. Notice and hearing. 14-121-1004. Contracts during pendency lection of tax. 14-121-1009. Procedure when construcof petition. tion of improvement aban-14-121-1005. Valid indebtedness unimdoned and all indebtedpaired. 14-121-1006. Claims against district. ness paid.

Effective Dates. Acts 1927, No. 59, § 4: approved Feb. 24, 1927. Emergency clause provided: "And it appearing that a number of drainage districts in the State of Arkansas have issued bonds to pay the costs of preliminary expenses, and that such districts are likely to be forced into liquidation and dissolution unless immediate legislative relief is granted, thereby preventing the making of improvements essential to the public health, an emer-

gency is hereby declared to exist, and it is declared that this act is necessary for the immediate preservation of the public health, and that the same shall take effect and be in force from and after its passage."

Acts 1955, No. 116, § 11: Mar. 1, 1955. Emergency clause provided: "It being ascertained that under the present drainage laws of the State of Arkansas, landowners in a district have no power, without action of the commissioners, to dissolve or abol-

ish a drainage district previously created and there being no efficient means for determining or paying the legitimate obligations of a drainage district sought to be dissolved or abolished in advance of the actual dissolution thereof, and this act therefore, being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and this act shall be in force immediately after its passage and approval."

## 14-121-1001. Applicability.

The provisions of this act shall be applicable to any drainage district of this state which shall meet all the following requirements:

(1) The district shall have been created either by order of the county

court or the circuit court on appeal;

(2) All lands within the district shall be within a single county;

(3) No assessment of benefits shall have been confirmed by the county court or the circuit court on appeal;

(4) No bonds shall have been issued by the districts secured by a

valid pledge of any assessments, benefits, or betterments;

(5) The district shall have been created without petitions in favor thereof having been filed, signed by a majority either in numbers, in acreage, or in value of the holders of real property within the district.

**History.** Acts 1955, No. 116, § 1; A.S.A. 1947, § 21-561.1.

116, codified as §§ 14-121-1001 — 14-121-1008

Meaning of "this act". Acts 1955, No.

## 14-121-1002. Filing petition.

The board of commissioners of any drainage district subject to the provisions of this act and meeting the requirements of § 14-121-1001, or not less than a majority of the property owners in the district determined either in number, in acreage, or in value of the lands of the district, when they deem it inadvisable or impractical and not for the best interest of the property owners of the district to construct the improvements contemplated by the organization of the district, may file a petition in the county court wherein the original petition to create the district was filed praying the court to abolish or dissolve the district. In the petition, the commissioners or landowners filing the petition shall set up their reasons why they are of the opinion the district should be abolished or dissolved.

**History.** Acts 1955, No. 116, § 2; A.S.A. 1947, § 21-561.2.

Meaning of "this act". See note to § 14-121-1001.

### 14-121-1003. Notice and hearing.

(a) Upon the filing of the petition the court shall direct the clerk of the court to give notice by publication in some newspaper in the county in which the property in the district lies for not less than two (2) consecutive weekly publications, which notice shall set out the purpose of the petition and the day set for the hearing thereon. The court shall fix a day for the hearing of the petition and shall hear the evidence thereon, and if it is of the opinion that it is for the best interests of the property owners of the district that the petition be granted, it shall abolish or dissolve the district, but if it is of the opinion that it is for the best interest of the property owners that the organization of the district be continued, then it shall overrule the petition.

(b) The overruling of one petition for the abandonment of a district or a determination of the court in that hearing that the petition is not signed by the requisite number of landowners shall not be a bar to the

filing of another petition for that purpose.

**History.** Acts 1955, No. 116, § 3; A.S.A. 1947, § 21-561.3.

# 14-121-1004. Contracts during pendency of petition.

During the pendency of the petition and prior to the hearing on it, the county court may, in its discretion and by its order, prohibit the commissioners of the district subject to the term of this act at the time of the filing of the petition from the making of contracts, the pledging of assessments or betterments, the incurring of new indebtedness or the issuance of bonds or other obligations of the district.

**History.** Acts 1955, No. 116, § 4; A.S.A. **Meaning of "this act".** See note to 1947, § 21-561.4. § 14-121-1001.

## 14-121-1005. Valid indebtedness unimpaired.

No dissolution of a district under the terms of this act shall impair or deny any creditor of the district the right to the collection of its bona fide and valid indebtedness existing against the district, but the creditors of the district shall be subject to the provisions of this act in connection with the presentation, allowance, or other adjudication with reference to their claim.

**History.** Acts 1955, No. 116, § 5; A.S.A.

1947, § 21-561.5.

Meaning of "this act". See note to § 14-121-1001.

# 14-121-1006. Claims against district.

(a) All claims against the district existing at the time the county court shall make an order for the dissolution of the district must be presented to the commissioners duly itemized and verified as is required in actions of account. If not presented to the commissioners of

the district within six (6) months from the date of the county court order of dissolution, claims shall forever be barred.

(b) Within ten (10) days from the allowance or disallowance of any claim presented to the commissioners, the claim shall be filed by the commissioners in the county court with an endorsement thereon as their allowance or disallowance of the same, and within thirty (30) days from the filing of the claim or account in the county court, the county court shall make its order either approving, rejecting, or modifying the actions of the commissioners with reference to any such indebtedness. Within the time allowed by law for appeal from orders of the county court, either the district or any landowner therein or any party claiming to be a creditor of the district may either appeal from the order of the county court to the circuit court or any creditor may institute an action against the district in any court of competent jurisdiction for the determination of the determination of the existence and amount of his claim.

**History.** Acts 1955, No. 116, § 6; A.S.A. 1947, § 21-561.6.

#### 14-121-1007. Partial continuance.

- (a) All drainage districts which are dissolved or abolished pursuant to the terms of this act shall nevertheless be continued in existence for the purpose of prosecuting and defending suits by or against the district and for the purpose of enabling the district to settle, close its business, to dispose of and convey its property, to levy, receive, and distribute taxes which are levied or collected for the purpose of meeting the obligations of the district, but not for the purpose of constructing the improvements for which the district shall have been established or for the purpose of creating any new indebtedness therefor other than indebtedness incident to the liquidation and settlement of the affairs of the district.
- (b) Notwithstanding the order of dissolution, commissioners may be appointed or removed in the same manner as if the order of dissolution had not been made.

**History.** Acts 1955, No. 116, § 7; A.S.A. **Meaning of "this act".** See note to 1947, § 21-561.7. § 14-121-1001.

# 14-121-1008. Indebtedness of dissolved districts — Levy and collection of tax.

(a) When the indebtedness owing by a district dissolved under the provisions of this act shall have been determined, it shall be the duty of the commissioners to certify to the county court their determination as to a tax levy upon the real property of the district which is sufficient to pay the indebtedness thereof, including the reasonable expenses of dissolution and settlement of the affairs of the district, which expenses shall be subject to the approval, modification, or rejection by the county

court. Upon ascertainment by the county court that the levy is required for the purpose of this act, the county court shall approve the levy by its order and certify the amount of the levy to the quorum court of the county in which the district is located.

(b) The levy shall be upon the assessed value of the real property in the district for the state and county taxation as it appears upon the

county assessment records.

(c) The taxes shall be collected and delinquencies shall be enforced in the same manner as if the district had continued in existence for the purpose of making the improvements contemplated by its original organization.

History. Acts 1955, No. 116, §§ 8, 9; Meaning of "this act". See note to A.S.A. 1947, §§ 21-561.8, 21-561.9. § 14-121-1001.

# 14-121-1009. Procedure when construction of improvement abandoned and all indebtedness paid.

(a) The board of commissioners of any drainage district in this state, when they may deem it inadvisable or impracticable and not for the best interests of the property owners of the district to construct the improvements contemplated by the organization of the district, may, when all indebtedness of the district has been fully paid, file a petition in the court in which the district was organized praying the court to abolish the district. In the petition the commissioners shall set up the reasons why they are of the opinion the district should be abolished.

(b)(1) Upon the filing of the petition, the court shall direct the clerk to give notice by publication in some newspaper in the county or counties in which the property in the district lies, for not less than two

(2) consecutive weekly publications.

(2) The notice shall set out the purpose of the petition and the day set for the heaving thereof

for the hearing thereof.

(c) The court shall fix a day for the hearing of the petition and shall hear the evidence thereon.

- (d)(1) If the court is of the opinion that it is for the best interests of the property owners of the district that the petition be granted, it shall abolish the district.
- (2) If the court is of the opinion that it is for the best interests of the property owners that the organization of the district be continued, then it shall overrule the petition.
- (e) The overruling of one petition for the abandonment of a district shall not be a bar to the filing of another petition for that purpose.

**History.** Acts 1927, No. 59, § 3; Pope's Dig., § 4523; A.S.A. 1947, § 21-561.

#### **CASE NOTES**

ANALYSIS

Abandonment.
Petition by commissioners.

#### Abandonment.

Drainage district had no right to require landowners to move buildings from old levee, when the district constructed a new levee under a new right-of-way deed, as old levee was abandoned by action of district in destroying old levee, and district had knowledge for several years that landowners were constructing buildings upon the old levee. Drainage Dist. No. 16

v. Holly, 213 Ark. 889, 214 S.W.2d 224 (1948).

#### Petition by Commissioners.

As the statutes do not authorize the county court to dissolve a drainage district after it has been organized, it cannot exercise that authority. Wilson v. Mattix, 149 Ark. 23, 231 S.W. 197 (1921) (decision under prior law).

County court has no authority on application by landowner to dissolve a drainage district after it has been organized. Roberts v. Baucum Drainage Dist., 198 Ark. 964, 132 S.W.2d 184 (1939).

#### **CHAPTER 122**

#### MUNICIPAL DRAINAGE IMPROVEMENT DISTRICTS

#### SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. DISTRICT FINANCING.

**Publisher's Notes.** As to applicability of certain laws to municipal improvement districts existing prior to 1949, see § 14-90-102.

As to the applicability of certain laws to municipal improvement districts existing prior to July 1, 1952, see § 14-90-103.

#### RESEARCH REFERENCES

UALR L.J. Goldner, A Call for Reform of Arkansas Municipal Law, 15 UALR L.J. 175.

Looney, Diffused Surface Water in Arkansas: Is It Time for a New Rule?, 18 UALR L.J. 3.

### SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

14-122-101. Chapter cumulative.

14-122-102. Creation of drainage improvement districts by certain cities.

14-122-103. Publication of notice of adoption of ordinance.

14-122-104. Filing referendum petitions
— Special election.

14-122-105. Establishment of drainage improvement district — Conditions.

14-122-106. District board of commission-

SECTION.

ers — Members.

14-122-107. Board meeting and organization — Formulation and filing of plans.

14-122-108. Employment of personnel — Payment of costs if improvement not made.

14-122-109. Powers of district to execute plans.

14-122-110. Powers of municipality.

14-122-111. Eminent domain.

14-122-112. Dissolution of districts.

Effective Dates. Acts 1975, No. 746, § 18: Apr. 3, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that some cities in the State having population in excess of 50,000 persons and particularly those situated on large streams in the State, have a serious drainage problem; that it is essential to the health and welfare of the citizens of such cities that appropriate drainage facilities be constructed and maintained; that this Act is designed to establish a procedure whereby such cities may create drainage improvement districts for constructing and maintaining such essential drainage facilities and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 526, § 5: Mar. 14, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that many cities in the state have serious drainage problems: that it is essential to the health and welfare of the citizens of those cities that appropriate drainage facilities be constructed and maintained; that this act is designed to establish a procedure whereby all cities may create drainage improvement districts for constructing and maintaining such essential drainage facilities and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

## 14-122-101. Chapter cumulative.

This chapter shall be construed to be cumulative of existing laws relating to the creation, operation, and existence of municipal improvement districts and shall not repeal any existing law unless that law is in direct conflict herewith, it being the intent of this chapter to provide additional authority to municipalities for creation of improvement districts and to authorize and enumerate additional powers for those districts.

**History.** Acts 1975, No. 746, § 16; A.S.A. 1947, § 20-1816.

# 14-122-102. Creation of drainage improvement districts by certain cities.

Any city of the first class in this state having a mayor-council form of government, may, by ordinance of the governing body, create a drainage improvement district in that city encompassing all or any part of the territory within the limits of the city.

**History.** Acts 1975, No. 746, § 1; A.S.A. 1947, § 20-1801; Acts 1989, No. 526, § 1.

## 14-122-103. Publication of notice of adoption of ordinance.

When the governing body of any city enacts an ordinance pursuant to the authority granted herein, creating a drainage improvement district encompassing all or any part of the territory within the limits of the city, the governing body shall cause a notice of the adoption of the ordinance and a complete copy of the ordinance enacted to be published in a newspaper of general circulation in the district within seven (7) days after the enactment thereof.

**History.** Acts 1975, No. 746, § 2; A.S.A. 1947, § 20-1802.

## 14-122-104. Filing referendum petitions — Special election.

If petitions signed by not less than fifteen percent (15%) of the qualified electors voting on the office of mayor in the city at the last preceding general election shall be filed with the city clerk of the city within forty-five (45) days after the enactment of the ordinance creating the municipal drainage improvement district requesting that the ordinance be referred to a vote of the qualified electors of the district, the petitions shall be referred to the people at a special election to be called by the mayor of the municipality to be held not less than forty-five (45) days nor more than sixty (60) days after the filing of the petitions.

**History.** Acts 1975, No. 746, § 3; A.S.A. 1947, § 20-1803.

# 14-122-105. Establishment of drainage improvement district — Conditions.

If referendum petitions are not filed within the time prescribed herein or if such petitions are filed and the electors voting at the special election held thereon do not reject the ordinance, the governing body of the municipality shall proceed to establish the drainage improvement district proposed in the ordinance in the manner and for the purposes provided in this chapter.

**History.** Acts 1975, No. 746, § 4; A.S.A. 1947, § 20-1804.

### 14-122-106. District board of commissioners — Members.

(a) The board of commissioners for the district, consisting of five (5) owners of real property in the district or officers or stockholders of a corporation owning real property within the district shall be appointed as follows:

(1) Four (4) commissioners shall be appointed by the governing body of the city, and if the district includes all territory within the corporate limits of the city no more than one (1) member of the board shall be appointed from each of the wards in the city;

(2) One (1) commissioner shall be appointed by the mayor of the city from the district at large.

(b) Any vacancy occurring on the board shall be filled in the same

manner herein prescribed for the initial appointments.

(c) The members of the board shall receive no compensation for their services but may be reimbursed for their actual expenses incurred in

the performance of their duties.

(d) The governing body of the city shall have the authority to remove any member of the board by a two-thirds (2/3) vote of the membership of the governing body for cause, after a hearing thereon at which the board member proposed to be removed and all other interested parties shall be given an opportunity to be heard.

**History.** Acts 1975, No. 746, § 5; A.S.A. 1947, § 20-1805.

# 14-122-107. Board meeting and organization — Formulation and filing of plans.

The board shall meet as soon as is practicable after appointment and qualification of its members, shall elect a chairman, a secretary, and such other officials as it deems necessary to carry out its responsibilities, and shall form plans for the improvement of drainage facilities in the district and obtain estimates of the cost thereof. The plan formed by the board shall be filed in the office of the city clerk.

**History.** Acts 1975, No. 746, § 6; A.S.A. 1947, § 20-1806.

# 14-122-108. Employment of personnel — Payment of costs if improvement not made.

(a) In the preparation of the plan of improvement, the district is authorized to employ architects and engineers to prepare plans, specifications, and estimates of cost for the construction of the improvements

and to supervise and inspect the construction.

(b) In addition, the district is authorized to engage and pay attorneys, accountants, and consultants and to obtain and pay for the other professional and technical services as it shall determine to be necessary or desirable in assisting it to effectively carry out the functions, powers, and duties conferred and imposed upon it to accomplish and maintain the proposed improvement.

(c) The district is further authorized to employ on a full-time basis persons necessary to maintain, operate, supervise, repair, administer, or otherwise render assistance in the effecting of the plan and its

continued benefit.

(d) All expenditures hereunder shall be taken as a cost of the

improvement.

(e) If for any cause the improvement shall not be made, the cost shall be a charge upon the real property in the district and shall be raised

and paid by an assessment upon the real property in the district as assessed for state and county purposes, which shall be levied by the governing body on the application of any person interested, and shall be paid to the district to be distributed amongst the creditors of the district.

(f) When any improvement is abandoned, it is made the duty of the board to report to the governing body the total amount of the debts which it has incurred, to the end that the governing body may make adequate provision for their payment.

**History.** Acts 1975, No. 746, § 7; A.S.A. 1947, § 20-1807.

# 14-122-109. Powers of district to execute plans.

- (a) The district shall have all powers necessary or desirable to undertake and carry out any and all parts of the plan for constructing, reconstructing, expanding, improving, or otherwise providing appropriate drainage facilities in the district, and to employ persons as it deems necessary to accomplish the purposes of the plan, including the authority to issue bonds as hereinafter provided except as otherwise provided in this chapter, Acts 1881, No. 84, and Acts 1899, No. 183, and all other laws of the State of Arkansas pertaining to municipal improvement districts, in general, as they have been and may be from time to time amended.
- (b) This chapter shall be applicable to a drainage improvement district established hereunder, and shall govern the procedures for the operation of a district's affairs including without limitation, the giving of any notice, appointment of assessors, making and filing of assessments of benefits or reassessments of benefits, annexation of additional territory to a district, collection of assessments, enforcement of delinquent assessments, and all other matters relating to the internal operation of a district.

**History.** Acts 1975, No. 746, § 8; A.S.A. 1947, § 20-1808.

**Publisher's Notes.** Acts 1881, No. 84, is codified as §§ 14-88-101, 14-88-202, 14-88-204, 14-88-302, 14-88-303, 14-88-305—14-88-308, 14-88-311, 14-88-403, 14-88-502, 14-89-201, 14-89-1001, 14-89-1002, 14-90-101, 14-90-201, 14-90-302, 14-90-403, 14-90-701, 14-90-801—14-90-805, 14-90-902, 14-90-903, 14-90-916, 14-90-1001—14-90-1003, 14-90-1005, 14-90-

1006, 14-90-1101 — 14-90-1106, 14-90-1108, 14-90-1201 — 14-90-1204, 14-90-1302, 14-90-1303, 14-91-101, 14-91-104 — 14-91-107, 14-91-201, and 14-235-301 — 14-235-305.

Acts 1899, No. 183, also referred to in this section, is codified as §§ 14-90-201 — 14-90-203, 14-90-401, 14-90-402, 14-90-501, 14-90-502, 14-90-601, 14-90-603, and 14-90-801 — 14-90-805.

### 14-122-110. Powers of municipality.

The governing body of any municipality in which a drainage improvement district is created as authorized in this chapter shall have all the powers necessary or desirable to undertake and carry out, or to assist a district to undertake and carry out, all improvements described in the drainage improvement plan of the district.

**History.** Acts 1975, No. 746, § 9; A.S.A. 1947, § 20-1809.

#### 14-122-111. Eminent domain.

(a) The right and power of eminent domain is conferred upon a district to enter upon, take, and condemn private property for the construction of improvements described in the plan of improvement, and the right and power of eminent domain conferred shall be exercised by the district in accordance with the procedures in §§ 18-15-301 — 18-15-307, as amended.

(b) The right and power conferred shall include without limitation the right and power to enter upon lands and proceed with the work of construction prior to the assessment and payment of damages and compensation upon posting a deposit by the district in accordance with the procedure described in §§ 18-15-301 — 18-15-303, as amended.

(c) The rights and powers granted in this section shall apply outside the boundaries of the municipality if the board of commissioners determines in writing that the exercise of the powers is necessary to

accomplish the plan of improvement.

(d) The rights and powers granted in this section shall not apply outside the boundaries of the county in which the municipality is located nor shall the rights and powers apply within the boundaries of another municipality within the county.

**History.** Acts 1975, No. 746, § 10; A.S.A. 1947, § 20-1810; Acts 1989, No. 526, § 2.

### 14-122-112. Dissolution of districts.

A district created under this chapter shall continue in existence in perpetuity unless dissolved by ordinance of the governing body of the city. However, no district shall be dissolved at any time during which there shall be outstanding bonded indebtedness of the district unless funds sufficient to retire the indebtedness, including all interest, redemption premiums, if any, trustee's and paying agent's fees, and cost of publication of notice of redemption, shall have been deposited in trust according to the terms of the resolution or trust indenture authorizing the bonded indebtedness.

#### Subchapter 2 — District Financing

SECTION.	
14-122-201.	Authority to borrow money
	and issue bonds or certifi-
	cates — Security.
14-122-202.	Nature of bonds.
14-122-203.	Authorizing resolution.
14-122-204.	Trust indenture.
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SECTION.				
14-122-207.	Execution	of bo	nds — Sea	1.
14-122-208.	Security	and	payment	of
	bonds.			
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14-122-209. Bonds — Tax exemption. 14-122-210. Board liability on bonds. 14-122-211. Additional funds — Supplemental annual assess-

ment.

Effective Dates. Acts 1975, No. 746, § 18: Apr. 3, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that some cities in the State having population in excess of 50,000 persons and particularly those situated on large streams in the State, have a serious drainage problem; that it is essential to the health and welfare of the citizens of such cities that appropriate drainage facilities be constructed and maintained; that this Act is designed to establish a procedure whereby such cities may create drainage improvement districts for constructing and maintaining such essential drainage facilities and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full

force and effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

# 14-122-201. Authority to borrow money and issue bonds or certificates — Security.

(a) For the purpose of providing funds to pay preliminary expenses, to construct improvements according to the plan, or to pay for an improvement already completed, the district may borrow money in an amount not exceeding the estimated cost thereof, including interest on the money borrowed to a date six (6) months subsequent to the estimated date of completion of the work and a reserve not to exceed one (1) year's principal and interest requirements, and may to that extent issue negotiable bonds or certificates of indebtedness.

(b) In order to secure the bonds, the district may pledge and mortgage all uncollected assessments of benefits for the payments of the bonds, and, in addition thereto, the municipality in which the district is created may pledge surplus utility revenues of the city to secure the bonds of the district.

(c) The bonds of the district shall be authorized and issued upon a majority vote of the qualified electors of the municipality.

**History.** Acts 1975, No. 746, § 11; 1981, No. 425, § 32; A.S.A. 1947, § 20-1811.

#### 14-122-202. Nature of bonds.

- (a) The bonds may be coupon bonds, payable to bearer, or may be registrable as to principal only or as to principal and interest, and may be made exchangeable for bonds of another denomination, may be in such form and denomination, may have such date or dates, may be stated to mature at such times, may bear interest payable at such times and at such rate or rates, may be payable at such places within or without the State of Arkansas, may be made subject to such terms of redemption in advance of maturity at such prices, and may contain such terms and conditions, all as the board shall determine.
- (b) The bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas, subject to provisions as to registration as set forth in this section.

**History.** Acts 1975, No. 746, § 11; 1981, No. 425, § 32; A.S.A. 1947, § 20-1811.

## 14-122-203. Authorizing resolution.

The authorizing resolution may contain any of the terms, covenants, and conditions that are deemed desirable by the board including, without limitation, those pertaining to:

(1) The maintenance of various funds and reserves;

(2) The nature and extent of the security;

(3) The issuance of additional bonds and the nature of the lien and pledge, parity or priority, in that event;

(4) The custody and application of the proceeds of the bonds;

(5) The collection and disposition of revenues;

- (6) The investing and reinvesting in securities specified by the board of any moneys during the periods not needed for authorized purposes; and
- (7) The rights, duties, and obligations of the district, the board, and of the holders and of the registered owners of the bonds.

**History.** Acts 1975, No. 746, § 11; 1981, No. 425, § 32; A.S.A. 1947, § 20-1811.

### 14-122-204. Trust indenture.

- (a) The authorizing resolution may provide for the execution by the district with a bank or trust company within or without the State of Arkansas of a trust indenture.
- (b) The trust indenture may contain any terms, covenants, and conditions that are deemed desirable by the board including, without limitation, those pertaining to the maintenance of various funds and

reserves, the nature and extent of the security, the issuance of additional bonds, and the nature of the lien and pledge, parity or priority, in that event, the custody and application of the proceeds of the bonds, the collection and disposition of assessments and of revenues, the investing and reinvesting, in securities specified by the board, of any moneys during periods not needed for authorized purposes, and the rights, duties, and obligations of the board and the holders and registered owners of the bonds.

**History.** Acts 1975, No. 746, § 11; 1981, No. 425, § 32; A.S.A. 1947, § 20-1811.

#### 14-122-205. Contents of bonds.

It shall be plainly stated on the face of each bond that it has been issued under the provisions of this chapter, that the bonds shall be obligations only of the district, and that in no event shall they constitute any indebtedness for which the faith and credit of the municipality or any of its revenues, other than surplus utility revenues, are pledged.

**History.** Acts 1975, No. 746, § 12; A.S.A. 1947, § 20-1812.

#### 14-122-206. Sale of bonds.

(a) The bonds shall be sold at public sale on sealed bids.

(b) Notice of the sale shall be published once a week for at least two (2) consecutive weeks in a newspaper having a general circulation throughout the State of Arkansas, with the first publication to be at least twenty (20) days prior to the date of sale, and may be published in such other publications as the district may determine.

(c) The bonds may be sold at such price as the board may accept,

including sale at a discount.

(d) The award, if made, shall be to the bidder whose bid results in the lowest net interest cost.

**History.** Acts 1975, No. 746, § 11; 1981, No. 425, § 32; A.S.A. 1947, § 20-1811.

## 14-122-207. Execution of bonds — Seal.

(a) The bonds shall be executed by the manual or facsimile signature of the chairman of the board and by the manual signature of the secretary of the board.

(b) The coupons attached to the bonds shall be executed by the

facsimile signature of the chairman of the board.

(c) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of the bonds

or coupons, their signatures shall, nevertheless, be valid and sufficient

for all purposes.

(d) The district shall adopt and use a seal in the execution and issuance of the bonds, and each bond shall be sealed with the seal of the district.

**History.** Acts 1975, No. 746, § 11; 1981, No. 425, § 32; A.S.A. 1947, § 20-1811.

# 14-122-208. Security and payment of bonds.

The principal of and interest on, and paying agent's fees in connection with, the bonds shall be secured by a lien on and pledge of, and shall be payable from, the assessments levied against the real property within the district.

**History.** Acts 1975, No. 746, § 12; A.S.A. 1947, § 20-1812.

## 14-122-209. Bonds — Tax exemption.

Bonds issued under the provisions of this chapter, and the interest thereon, shall be exempt from all state, county, and municipal taxes. The exemption shall include income, inheritance, and estate taxes.

**History.** Acts 1975, No. 746, § 13; A.S.A. 1947, § 20-1813.

A.C.R.C. Notes. Language excluding property taxes from the exemption provided by this section was deleted pursuant to Ark. Const. Amend. 57, § 1 and § 26-3-302. Arkansas Const. Amend. 57, § 1 provides that the General Assembly may classify intangible personal property for assessment at lower percentages of value

than other property and may exempt one or more classes of intangible personal property from taxation, or may provide for the taxation of intangible personal property on a basis other than ad valorem. Section 26-3-302 exempts all intangible personal property in this state from all ad valorem tax levies of counties, cities, and school districts in the state as of January 1, 1976.

## 14-122-210. Board liability on bonds.

No member of the board shall be personally liable on the bonds or for any damages sustained by anyone in connection with any contracts entered into in carrying out the purposes and intent of this chapter unless he shall have acted with corrupt intent.

**History.** Acts 1975, No. 746, § 12; A.S.A. 1947, § 20-1812.

# 14-122-211. Additional funds — Supplemental annual assessment.

(a) In order to effectuate the plan of improvement and to maintain the improvements constructed thereunder, it may be desirable to provide additional funds for operation, maintenance, repairs, and replacements and to levy a supplemental annual assessment upon the property owners within the district in order to provide funds for such

purposes.

(b) The supplemental annual assessment for operation, maintenance, repairs, and replacements shall be in addition to that levied and collected upon the assessment of benefits which has been, or may be, pledged and mortgaged to retire bonded indebtedness of the district as authorized in this chapter.

(c) The petition requesting the creation of the district, and the ordinances creating the district and levying the tax on the assessment of benefits to provide for the retirement of bonded indebtedness, may also provide for a continuing supplemental annual levy of an assessment, which shall be designated for the purposes of operation, mainte-

nance, repairs, and replacements of the improvements.

(d) However, if the petition requesting the creation of the district does not contain a provision requesting the levy of a supplemental annual assessment for operation, maintenance, repairs, and replacements, a majority in value of the owners of real property within the district may at any time petition the governing body for the adoption of an ordinance levying the supplemental assessment.

(e) If such petition is later filed, it shall be the duty of the governing body to adopt the requested ordinance upon inquiry only as to the

sufficiency of the petition.

- (f) The levy and collection of the supplemental annual assessment for operation, maintenance, repairs, and replacements shall not operate to reduce the total of the assessed benefits which may be, or may have been, mortgaged and pledged to secure bonded indebtedness of the district.
- (g) Upon request of the board, the annual supplemental assessment may be adjusted no more frequently than annually by the governing body.
- (h) Collection of the supplemental assessment for operation, maintenance, repairs, and replacements shall be in the same manner as for the collection of assessment of benefits pledged to retire indebtedness of the district. The failure to pay the supplemental assessments shall be enforced by proceedings in the same manner as other delinquent assessments.

**History.** Acts 1975, No. 746, § 14; A.S.A. 1947, § 20-1814.

## **CHAPTER 123**

## LEVEE IMPROVEMENT DISTRICTS GENERALLY

#### SIIBCHADTED

- 1. GENERAL PROVISIONS. [RESERVED.]
- 2. DISTRICT ESTABLISHMENT.
- 3. Board of Directors or Assessors.
- 4. DISTRICT OPERATION.
- 5. DISTRICTS IN FOUR OR MORE COUNTIES.

Cross References. Combination levee and drainage improvement districts, § 14-120-101 et seq.

Publication of notices, § 16-3-101 et

Relocation assistance payments, § 22-9-701 et seq.

Tort liability immunity, § 21-9-301 et seq.

#### RESEARCH REFERENCES

**Am. Jur.** 3 Am. Jur. 2d, Adv. Poss., § 270.

16 Am. Jur. 2d, Con. Law, § 350. Ark. L. Rev. The Vitality of the Navi-

gability Criterion in the Era of Environmentalism, 25 Ark. L. Rev. 250.

Lex Aquae Arkansas, 27 Ark. L. Rev. 429.

#### Subchapter 1 — General Provisions

#### [Reserved]

#### Subchapter 2 — District Establishment

SECTION.
14-123-201. Authority to create districts.
14-123-202. Notice of proposed district formation.
14-123-203. District name.

14-123-204. Consolidation of districts

SECTION.

and boards — Cooperation with other states.

14-123-205. Boundaries — Change or alteration.

Effective Dates. Acts 1879, No. 78, § 24: effective on passage.

Acts 1889, No. 26, § 8: effective on passage.

# 14-123-201. Authority to create districts.

The county courts of the several counties in this state containing lands subject to overflow may divide the territory of their respective counties subject to overflow into one (1) or more districts, having reference to the locality of the land and the character of the river front, including in each of the districts as nearly as is possible all lands subject to overflow from the same crevasses or direction, which can be protected by the same system of levees.

**History.** Acts 1891, No. 163, § 1, p. Dig., §§ 4537, 4538; A.S.A. 1947, § 21-297; C. & M. Dig., §§ 6811, 6812; Pope's 601.

# 14-123-202. Notice of proposed district formation.

(a) No district shall be formed unless notice of an intention to apply therefor is first given by posting written notices in three (3) public places in the limits of the proposed district at least ten (10) days before the formation of the district.

(b) Notice may be given by any land holder in the district or by order of the court made at a preceding term.

**History.** Acts 1879, No. 78, § 1, p. 117; C. & M. Dig., § 6814; Pope's Dig., § 4540; A.S.A. 1947, § 21-603.

#### 14-123-203. District name.

The court shall designate a number or name for each district, and the district shall be known and designated by number or name, thus:

"Levee District No. ....., County ...... Levee District ...... County."

**History.** Acts 1879, No. 78, § 5, p. 117; C. & M. Dig., § 6821; Pope's Dig., § 4547; A.S.A. 1947, § 21-607.

### 14-123-204. Consolidation of districts and boards — Cooperation with other states.

- (a) Wherever it shall be made to appear in any way that there shall be land in two (2) or more counties subject to overflow from the same crevasses or direction, and which can be protected by the same system of levees, the directors of the several levee districts of the two (2) or more counties may, by the consent of the county courts of counties entered of record, consolidate their several districts into one (1) district, and the directors shall constitute the board of directors for the consolidated district and shall represent their several districts in the consolidated districts.
- (b) The board of the consolidated district shall elect a president, a secretary and treasurer, and an auditor, and allow such salary to each as his services may justify.
- (c) The levee board shall control and supervise the interests of the consolidated levee system, and the officers of all county levee boards within the system shall report to the board of directors through their county directors.
- (d) The board may cooperate with any levee board of another state if necessary to complete their system of levees.

History. Acts 1891, No. 163, § 1, p. Dig., §§ 4537, 4538; A.S.A. 1947, § 21-297; C. & M. Dig., §§ 6811, 6812; Pope's 601.

# 14-123-205. Boundaries — Change or alteration.

(a) The court may lay off levee districts or change or alter the boundaries of existing levee districts at any regular term.

(b) When an alteration or change in the boundary line of any existing levee district is desired and the new territory sought to be embraced in the alteration or change lies in two (2) or more counties, either county, with the consent of the county court of the other county or counties,

SECTION.

entered of record, may make the change or alteration. The court of the county making the change or alteration shall have the same jurisdiction and power over the lands and officers of the district as if the district were wholly within the county.

(c) The notice required by § 14-123-202, for the formation of any new district, shall not be required for the change or alteration in the boundaries of an existing district.

**History.** Acts 1879, No. 78, § 1, p. 117; § 6813; Pope's Dig., § 4539; A.S.A. 1947, 1889, No. 26, § 1, p. 27; C. & M. Dig., § 21-602.

### Subchapter 3 — Board of Directors or Assessors

sessors — In general —
Erroneous selection of
commissioners or directors.

14-123-302. Voting by nonresident bondholders.

14-123-303. Certification of unopposed
candidates without election.

14-123-304. Procedure at polls — Depositing ballots and returns.

14-123-305. Canvass of votes — Declaration of result — Contest.

14-123-306. Oath — Terms of office

14-123-301. Election of directors and as-

iting ballots and returns.

14-123-305. Canvass of votes — Declaration of result — Contest.

14-123-316.

14-123-316.

14-123-316.

Preambles. Acts 1979, No. 67 contained a preamble which read: "Whereas, ownership of timber located on the rights-of-way of levee and drainage districts created under Act 279 of 1909, as amended, is

14-123-314.

14-123-315.

14-123-316.

"Whereas, the Board of Directors of the St. Francis Levee District created by Act 19 of 1893 has exercised control and ownership of the timber located on its rights-of-way since the creation of said District; and

vested in said districts under section 9 of

"Whereas, it was the legislative intent that the St. Francis Levee District have the same right and title to the timber located on its rights-of-way as those districts created under Act 279 of 1909, as amended and such intent should be expressed by the enactment of this Act;

"Now therefore...."

Act 177 of 1913; and

Effective Dates. Acts 1879, No. 78, § 24: effective on passage.

SECTION. 14-123-307. Vacancies.

14-123-308. Powers and duties. 14-123-309. Records and reports.

14-123-310. Treasurer.

14-123-311. Warrants — Employment and supervision of labor-

14-123-312. Determination of necessary work — Survey and report.

14-123-313. Ownership of timber on right-of-way.

14-123-314. Depositories for funds.

14-123-315. Interest on deposits.

14-123-316. Compensation of directors, assessors, employees, etc.

Acts 1887, No. 86, § 10: effective on passage.

Acts 1889, No. 26, § 8: effective on passage

Acts 1909, No. 231, § 3: effective on passage.

Acts 1934 (3rd Ex. Sess.), No. 5, § 6: Apr. 13, 1934. Emergency clause provided: "It is hereby ascertained and declared that by reason of the defects in the laws of the State of Arkansas regulating the issuance and sale of bonds of levee districts, the deposits of their funds and the bonds of their treasurers, it is difficult for said districts to sell bonds to raise funds with which to make necessary repairs and extensions to their levees, as a result of which the health and safety of the lives and property of many citizens of the State are endangered; and that by reason of the present economic conditions many citizens of the state are out of work, and the funds herein referred to would provide work for a large number of persons and

thereby add to the peace and happiness of the state. It is, therefore, declared that an emergency exists, that this act is necessary for the immediate preservation of the public peace, health and safety and that this Act shall take effect and be in force from and after its approval."

Acts 1943, No. 49, § 3: approved Feb. 13, 1943. Emergency clause provided: "It is ascertained that in levee districts in which the compensation of the officers and employees who devote their full time to the performance of their duties is fixed by legislative act, the compensation paid to such officers and employees is not commensurate with the services rendered, thereby impairing the successful operation of such districts. An emergency is, therefore, declared and this Act shall take effect and be in force from and after its passage."

Acts 1979, No. 67, § 3: Feb. 7, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is some doubt as to the ownership of timber located on rights-ofway of certain levee districts and that this

Act is immediately necessary to clarify the legislative intent of enactment creating certain levee districts. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in full force from the date of its approval."

Acts 1991, No. 778, § 5: Mar. 26, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that due to no fault of their own. certain levee districts have failed to select members of their Directors in the manner required by law; that such Directors have been acting in good faith during their terms in office; that such action should be validated by this act becoming effective immediately upon its passage and approval. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after is passage and approval."

### 14-123-301. Election of directors and assessors — In general — Erroneous selection of commissioners or directors.

- (a) At the term of the court at which the districts may be laid off, or at any future term, the court shall designate and fix a day of election for three (3) directors of levees and three (3) assessors of lands in each of the districts and shall appoint three (3) judges of election to hold the election.
- (b) The election shall be held in accordance with the general election laws of the state, except that none but landholders of the district and mortgagees in possession after condition broken shall be allowed to vote at the election, be eligible to election to either of the offices, or to act as judges at the election, except that guardians duly appointed, and who shall have given bond and received letters of guardianship of infant heirs or insane persons owning land in the district, may vote in right of their respective wards.
- (c) Where any levee district in Arkansas organized under any general or special act of the General Assembly provided for election of commissioners or directors and, through error, such commissioners or directors have not been elected but selected by some other method, and such commissioners or directors have served as such commissioners or directors in good faith, the acts of such commissioners and directors are hereby validated and shall have the same force and effect as though

such commissioners or directors had been selected in the manner provided by law.

(d) In any levee district heretofore established which is now operating with a board of commissioners or directors, all of whom have taken, or, within thirty (30) days after March 26, 1991, take the oath required by law, said commissioners or directors may continue to serve for the terms prescribed by law, and the acts of such boards are hereby validated.

**History.** Acts 1879, No. 78, § 2, p. 117; §§ 4541, 4542; A.S.A. 1947, § 21-604; C. & M. Dig., §§ 6815, 6816; Pope's Dig., Acts 1991, No. 778, § 1.

## 14-123-302. Voting by nonresident bondholders.

Nonresident bondholders, as well as resident landowners, shall be allowed to vote at such elections and also have a vote in determining when work shall be done, as prescribed in § 14-123-301, and the nonresident bondholders may cast their votes either by themselves or by their agents or attorney in fact, duly appointed.

**History.** Acts 1879, No. 78, § 18, p. 117; C. & M. Dig., § 6841; Pope's Dig., § 4567; A.S.A. 1947, § 21-609.

# 14-123-303. Certification of unopposed candidates without election.

- (a) In all elections held within this state for the election of directors or commissioners of any levee district, the names of unopposed candidates shall not be printed on the ballot, and the election commissioners of the county shall certify as elected the person who qualifies for the office.
- (b) In the event all of the candidates within the county are unopposed, no election shall be held in the county. The person qualifying for the office shall be certified by the county board of election commissioners as the duly elected director or commissioner of the district and shall receive from the county board of election commissioners a certificate of election to the office.

**History.** Acts 1967, No. 504, § 1; A.S.A. 1947, § 21-605.1.

# 14-123-304. Procedure at polls — Depositing ballots and returns.

- (a) The judges of the election shall:
- (1) Open the polls;
- (2) Appoint two (2) clerks of election;
- (3) Proceed to hold the election by ballot;
- (4) Keep the polls open until sundown of election day; and

- (5) Cause poll books to be kept and the name of each voter to be recorded with the number of his ballot.
- (b) Ballots shall be counted, and the result of the election shall be declared and recorded and the returns signed by the judges and clerks of the election.
  - (c) The returns and ballots shall be:
  - (1) Sealed up and directed to the judge of the county court;

(2) Sealed up in separate envelopes; and

(3) Deposited in the clerk's office of the county by one (1) of the judges of the election within five (5) days after the election is held.

History. Acts 1879, No. 78, § 3, p. 117; C. & M. Dig., § 6817; Pope's Dig., § 4543; A.S.A. 1947, § 21-605.

#### 14-123-305. Canvass of votes — Declaration of result — Contest.

- (a) If it is more than ten (10) days until a regular term of the court after the election is held, the judge of the county court shall hold a special term of the court within ten (10) days of the election, at which the returns shall be opened by the court and clerk, who shall constitute the board of canvassers to canvass the votes at the election and declare the result.
- (b) The three (3) persons having the highest number of votes in the district for directors shall compose the board of levee directors for the district.

(c) The three (3) persons having the highest number of votes for assessors shall compose the board of assessors of the district.

(d) The court shall cause an order to be entered on the minutes of the court reciting the election and the names of the persons so found to be elected to the offices and shall give to each of the persons a certificate of his election, attested by the clerk and the seal of the court.

(e) In case any person voted for at the election shall contest the election of either of the officers, he shall commence proceedings within ten (10) days after the result of the election is declared by the court. The contest shall be conducted in the same manner and governed by the same laws as are prescribed for contesting the election of constable.

History. Acts 1879, No. 78, § 4, p. 117; C. & M. Dig., §§ 6818-6820; Pope's Dig., §§ 4544-4546; A.S.A. 1947, § 21-606.

## 14-123-306. Oath — Terms of office.

(a) All directors and assessors elected under the provisions of this act shall, before they enter upon the discharge of their duties, take and subscribe the oath required by Arkansas Constitution, Article 19, § 20.

(b) They shall each hold their office for three (3) years and until their successors are elected and qualified.

(c) After the first election, the county court shall designate one (1) director and one (1) assessor to hold office for one (1) year, and one (1) of each to hold office for two (2) years, and one (1) of each for three (3) years, and thereafter one (1) of each of the officers shall be elected by the landholders of the district on the first Monday of May of each year.

(d) The directors and assessors shall hold their offices until the first Monday in May after the expiration of one (1) year from their first

election.

**History.** Acts 1879, No. 78, § 17, p. 117; C. & M. Dig., §§ 6839, 6840; Pope's Dig., §§ 4565, 4566; A.S.A. 1947, § 21-608.

**Meaning of "this act"**. Acts 1879, No. 78, codified as §§ 14-123-202, 14-123-203,

14-123-205, 14-123-301, 14-123-302, 14-123-304 — 14-123-306, 14-123-311, 14-123-316, 14-123-401 — 14-123-409, 14-123-411, and 14-123-413 — 14-123-419.

#### 14-123-307. Vacancies.

Should a vacancy occur in the board of directors or assessors during the term for which they are elected, the county court shall order an election to fill the vacancy, notice of which election shall be given by posting written or printed handbills in at least twenty (20) public places in the district ten (10) days immediately prior to holding the election.

**History.** Acts 1889, No. 26, § 5, p. 27; C. & M. Dig., § 6833; Pope's Dig., § 4559; A.S.A. 1947, § 21-610.

### 14-123-308. Powers and duties.

The board of directors shall:

- (1) Have the exclusive control and supervision of the levees in their district; and
  - (2) Make all necessary rules for their protection.

**History.** Acts 1889, No. 26, § 7, p. 27; C. & M. Dig., § 6835; Pope's Dig., § 4561; A.S.A. 1947, § 21-614.

## 14-123-309. Records and reports.

The board of directors shall keep a record of their proceedings as well as a record of all the meetings of the district and shall, at the annual meeting on the first Monday of May in each year, report to the electors of the district an itemized statement, under oath, of the receipts and expenditures of the year preceding, which report they shall also cause to be published in some newspaper printed and published in the county, if any exists.

**History.** Acts 1889, No. 26, § 6, p. 27; C. & M. Dig., § 6834; Pope's Dig., § 4560; A.S.A. 1947, § 21-613.

#### 14-123-310. Treasurer.

(a) The board of directors shall at their annual meeting on the first Monday in May, or as soon thereafter as practicable, elect a treasurer for the levee district, whose term of office shall continue until the first Monday in the following May or until his successor is duly elected and qualified.

(b) The treasurer shall give such bond and receive such compensa-

tion as from time to time may be fixed by the board of directors.

(c) The treasurer of any levee district shall be custodian of all funds of the district and shall cause to be made and filed with the board of directors or commissioners of the district a sufficient bond, conditioned on the faithful performance of his duties, and to render full accountability, which bond shall be written in some surety company authorized to do business in the State of Arkansas and approved by the board or its finance committee, the expense of which is to be paid by the district.

(d) The treasurer shall not be construed to be an insurer of the funds of the district and shall not be liable on the bond except for his failure to pay over or account for funds in his possession. The receipt of any funds by any depository of the district shall release the treasurer from any liability therefor unless and until the funds shall thereafter be paid

to him by the depository.

History. Acts 1897, No. 8, § 6, p. 8; C. Sess.), No. 5, § 4; Pope's Dig., §§ 4571, 4575; A.S.A. 1947, §§ 21-615, 21-618. & M. Dig., § 6845; Acts 1934 (3rd Ex.

#### CASE NOTES

Cited: Jefferson Bank v. Little Red River Levee Dist., 186 Ark. 1048, 57 S.W.2d 805 (1933).

# 14-123-311. Warrants - Employment and supervision of labor-

- (a) The board of levee directors shall draw warrants on the treasurer of the district to pay for work done on the levees, which shall be paid by the treasurer in the order of presentation.
  - (b) The board of levee directors shall:
  - (1) Have charge of all the public levees in their districts;
  - (2) Keep the public levees in repair; and
  - (3) For this purpose, have power to employ and superintend laborers.

History. Acts 1879, No. 78, § 22, p. Dig., § 6844; Pope's Dig., § 4570; A.S.A. 117; 1887, No. 86, § 9, p. 132; C. & M. 1947, § 21-619.

# 14-123-312. Determination of necessary work — Survey and report.

- (a) It shall be the duty of the board of directors to determine what work is necessary to be done, or levees to be constructed, to protect their district from overflow.
- (b) They shall cause accurate surveys of all work deemed necessary by them and accurate estimates and calculations, to be made by some suitable and competent engineer or other person, who shall make a written report thereof, showing the amount, character, and kind of work, the exact location thereof, and the probable cost thereof, and return the report with all plans and specifications to the board of directors.

**History.** Acts 1879, No. 78, § 6, p. 117; C. & M. Dig., § 6822; Pope's Dig., § 4548; A.S.A. 1947, § 21-620.

#### CASE NOTES

Continuing Power.

The board of directors has a continuing power to act after the completion of the improvement and, at their discretion, to perform the work necessary to be done on the levee system for the purpose of protecting the property of their district from loss and destruction by overflow. West v. Cotton Belt Levee Dist., 116 Ark. 538, 173 S.W. 403 (1915).

The power conferred on levee districts to construct levees is not exhausted by their original construction, but is a continuing one, and they are authorized to relocate and reconstruct the levees as the exigency of the case may require. Hornor v. Craggs, 185 Ark. 1155, 51 S.W.2d 861 (1932).

# 14-123-313. Ownership of timber on right-of-way.

The ownership of timber located on the right-of-way of any levee district, embracing lands in four (4) or more counties, shall be vested in the board of directors of the district. The board may use, sell, or dispose of the timber as it deems best.

**History.** Acts 1979, No. 67, § 1; A.S.A. 1947, § 21-522.1.

## 14-123-314. Depositories for funds.

(a) The board of directors or commissioners of any levee district organized under general or special laws, which is or may be hereafter authorized to select depositories for the funds of the district, shall select the depositories at the time, in the manner, and for the term as is required by existing statutes.

(b) However, in the event the depositories so selected cannot or do not provide the security required by law in an amount sufficient to provide protection for all the funds of the district, the board of directors or commissioners are authorized to select additional depositories without advertising for bids, which depositories may be located outside the

district and within or without the State of Arkansas. The additional depositories shall be required to provide the security required by law for deposits of improvements districts.

**History.** Acts 1934 (3rd Ex. Sess.), No. 5, § 2; Pope's Dig., § 4573; A.S.A. 1947, § \$ 21-616.

Depositories required to give bond, § 14-86-1801 et seq.

**Cross References.** Deposit of public funds, § 19-8-101 et seq.

### 14-123-315. Interest on deposits.

The rate of depository interest to be paid by the depositories selected in accordance with § 14-123-314 and by those depositories selected in accordance with existing laws shall be such as, in the opinion of the board of directors or commissioners, is consistent with the security given and for the best interests of the district. However, if the board is unable to secure any interest on its deposits, then it is authorized to make such deposits without interest.

**History.** Acts 1934 (3rd Ex. Sess.), No. 5, § 3; Pope's Dig., § 4574; A.S.A. 1947, § 21-617.

# 14-123-316. Compensation of directors, assessors, employees, etc.

(a) The directors and assessors shall each receive the sum of five dollars (\$5.00) per day while actually and necessarily engaged in the performance of their duties under this act.

(b) The directors shall be authorized to employ an engineer at a price not to exceed one hundred fifty dollars (\$150) per month while actually

engaged in the performance of his duties.

(c) The board of directors or board of commissioners of levee districts organized under general laws or special acts shall have the power to fix the amount of compensation to be paid to the officers and employees of the district who are required to devote all their time to the performance of the duties of their office or employment.

**History.** Acts 1879, No. 78, § 19, p. 117; 1909, No. 231, § 2, p. 696; C. & M. Dig., § 6842; Pope's Dig., § 4568; Acts 1943, No. 49, § 1; A.S.A. 1947, §§ 21-611, 21-612.

Meaning of "this act". See note to § 14-123-306.

#### **CASE NOTES**

#### Retirement Plans.

Levee district did not have authority to put into effect retirement plan for officers and employees. Daggett v. St. Francis Levee Dist., 226 Ark. 545, 291 S.W.2d 254 (1956).

#### Subchapter 4 — District Operation

SECTION. 14-123-401. Assessment of lands. 14-123-402. Entry of land on assessment book. 14-123-403. Notice of landholders' meeting. 14-123-404. Landowners' meeting Levy of tax - Issuance of evidence of indebtedness. 14-123-405. Letting of work. 14-123-406. Bond of contractors. 14-123-407. Execution of work - Accep-14-123-408. Assessment for cost of work - Revision and delivery of

14-123-409. Assessments as lien — Interest on delinquent assessments — Correcting errors.

lists.

14-123-410. Assessment of omitted lands.

SECTION.

14-123-411. Payment of assessments — Effect of delinquency.

14-123-412. Notice of pending suit in districts with five counties or

14-123-413. Notice of pending suit generallv.

14-123-414. Trial date — Continuance.

14-123-415. Decree — Sale of land.

14-123-416. Redemption.

14-123-417. Parties defendant.

14-123-418. Trial procedure.

14-123-419. Annual tax.

14-123-420. Protection of persons injured by change of levee location.

14-123-421. Authority to issue remaining bonds.

14-123-422. Report of state lands sold by levee districts.

Cross References. Alternative method of assessment in districts in more than one county, § 14-124-101 et seq.

Assessments not to be reduced after issuance of bonds, § 14-86-602.

Partition of assessments among several owners of single tracts, § 14-86-601.

Reassessments, §§ 14-120-108, 14-120-

Right of review of assessment by chancery court, § 14-120-501 et seq.

Time for payment of taxes or assessments, § 14-86-1103.

Preambles. Acts 1932 (2nd Ex. Sess), No. 14 contained a preamble which read: "Whereas, when levees are constructed, persons whose lands are protected thereby are induced to make valuable improvements on the faith of such levees, and lands are purchased and sold on the faith that the protection will continue, and taxes are assessed and collected on that basis; and

"Whereas, a setting back of the levee exposes the lands to destructive overflows, and an encircling of the lands by a change in the levee deprives them of the advantages of drainage and access; and

"Whereas, such changes are made for the public good and constitute a damage to property for a public use under the provisions of our Constitution;

"Now, therefore...."

Effective Dates. Acts 1879, No. 78, § 24: effective on passage.

Acts 1887, No. 86, § 10: effective on passage.

Acts 1889, No. 26, § 8: effective on passage.

Acts 1895, No. 26, § 4: effective on passage.

Acts 1897, No. 8, § 7: effective on pas-

Acts 1901, No. 94, § 4: effective on pas-

Acts 1909, No. 231, § 3: effective on

passage.

Acts 1932 (2nd Ex. Sess.), No. 14, § 4: approved Apr. 14, 1932. Emergency clause provided: "It is ascertained and hereby declared that it is urgently necessary that levee districts be granted the powers hereby conferred, in order that they may construct, reconstruct and repair their levees, and change the location thereof, without vexatious litigation which might retard their construction, repair or change of location, and expose the lands of the district to destructive overflows, and that such overflows are perilous to the public health and safety; and it is therefore ascertained and declared that an emergency exists requiring that this act should go into immediate operation; and, accordingly, this act shall take effect and be in force immediately upon its passage."

Acts 1934 (3rd Ex. Sess.), No. 5, § 6: Apr. 13, 1934. Emergency clause provided: "It is hereby ascertained and declared that by reason of the defects in the laws of the State of Arkansas regulating the issuance and sale of bonds of levee districts, the deposits of their funds and the bonds of their treasurers, it is difficult for said districts to sell bonds to raise funds with which to make necessary repairs and extensions to their levees, as a result of which the health and safety of the lives and property of many citizens of the State are endangered; and that by reason of the present economic conditions many citizens of the state are out of work, and the funds herein referred to would provide work for a large number of persons and thereby add to the peace and happiness of the state. It is, therefore, declared that an emergency exists, that this act is necessary for the immediate preservation of the public peace, health and safety and that this act shall take effect and be in force from and after its approval."

Acts 1947, No. 141, § 3: approved Mar. 3, 1947. Emergency clause provided: "It is hereby ascertained by the General Assembly of the State of Arkansas that the

present laws concerning the notification of the pendency of suits required to be given landowners whose lands in levee districts of this State are delinquent are inadequate and necessitate needless expenditures to defray court costs. It is therefore declared that this Act is necessary for the immediate preservation of the public peace, health and safety and an emergency is declared to exist and this Act shall take effect and be in full force from and after its passage."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being nec-

essary for the preservation of the public

peace, health and safety, shall be in effect

from and after its passage and approval."

## 14-123-401. Assessment of lands.

Assessors shall:

(1) Assess the value of lands in the district subject to overflow and benefited by the work, having reference to the value of the land without the work, and the value thereof as benefited by work; and

(2) Assess the value thereof as improved by the work in an assessment book to be provided for that purpose.

**History.** Acts 1879, No. 78, § 7, p. 117; C. & M. Dig., § 6823; Pope's Dig., § 4549; A.S.A. 1947, § 21-621.

#### CASE NOTES

ANALYSIS

Construction.
Mineral interests.

Construction.

Word "taxation" does not include benefit

assessment by local improvement district, as it is based on alleged benefit to property owner and is not for support of the local government. Board of Directors v. Reconstruction Fin. Corp., 170 F.2d 430 (8th Cir. 1948).

#### Mineral Interests.

Separate assessment of mineral interests is inapplicable in assessment of ben-

efits by an improvement district. Long Prairie Levee Dist. v. Wall, 227 Ark. 305, 298 S.W.2d 52 (1957).

## 14-123-402. Entry of land on assessment book.

(a) The lands shall be entered upon the books in convenient subdivisions, as surveyed by the federal government, with appropriate columns showing the names and residences of owners of the land, and of any person holding recorded liens or encumbrances thereon, if known to the assessors.

(b) The following shall also be recorded on the assessment book: The number of acres cleared or uncleared, as nearly as the assessors can ascertain, without measurement; the value thereof as assessed by them without the work; and the value thereof as improved by the work.

(c) No error in the description of the lands shall invalidate the assessment if sufficient description is given to ascertain where the land is situated.

**History.** Acts 1879, No. 78, § 7, p. 117; § 6824; Pope's Dig., § 4550; A.S.A. 1947, 1887, No. 86, § 2, p. 132; C. & M. Dig., § 21-622.

### 14-123-403. Notice of landholders' meeting.

The board of directors shall then call a meeting of all the landholders of the district at some place convenient to some part of the work and shall give at least five (5) days' notice of the time and place of the meeting, by written or printed handbills put up in ten (10) public places in the district, that the estimates of the surveyor and the list of the assessors will be submitted to the meeting for action, and requiring the owner of the lands and the holders of any lien thereon to show cause at the meeting why the lands shall not be assessed with their proportional part of the cost of the work.

**History.** Acts 1879, No. 78, § 8, p. 117; C. & M. Dig., § 6825; Pope's Dig., § 4551; A.S.A. 1947, § 21-623.

#### **CASE NOTES**

#### Constitutionality.

This section is valid. West v. Cotton Belt Levee Dist., 116 Ark. 538, 173 S.W. 403 (1915).

# 14-123-404. Landowners' meeting — Levy of tax — Issuance of evidence of indebtedness.

(a) At the landowners' meetings the reports and estimates of the engineers, the assessments of the assessors, and an estimate of the probable cost of the work shall be laid before the landowners present. If a majority of the landowners present, either in person or by proxy, shall

vote in favor of the work, it shall be the duty of the board of directors to cause the levee to be constructed in accordance with the reports and

estimates of the engineers, as nearly as may be.

(b) To that end the board of directors shall have power and authority to levy a tax upon the betterment estimated to accrue to the lands by reason of the work, sufficient to pay the cost thereof, which the tax may be paid as a whole or in such annual installments as the board of directors may decide.

(c) When the assessment shall be payable in annual installments, the treasurer of the district shall collect each year only the annual

installments due for the year and any delinquent installments.

(d) The board of directors may issue interest-bearing evidences of indebtedness or bonds which may be either negotiable or nonnegotiable, and in such form and bearing interest at such rate or rates, and payable at such time or times as the board of directors may by resolution declare.

(e) To secure the prompt payment thereof, the board may pledge the property and revenue of the district, provided the total indebtedness shall not exceed the estimated betterment to accrue to the land by reason of the work.

**History.** Acts 1879, No. 78, § 9, p. 117; 1887, No. 86, § 3, p. 132; 1895, No. 26, § 1, p. 30; 1909, No. 231, § 1, p. 696; C. & M. Dig., § 6826; Pope's Dig., § 4552; Acts

1981, No. 425, § 25; A.S.A. 1947, § 21-624

Cross References. Levy of tax for preliminary expenses, § 14-86-701.

#### CASE NOTES

**Cited:** Overstreet v. Levee Dist. No. 1, 80 Ark. 462, 97 S.W. 676 (1906).

## 14-123-405. Letting of work.

If it shall be decided at the meeting, in the manner aforesaid, to do the work, the directors shall proceed to let the work out to the lowest and best bidder. However, the directors shall have the right to reject all bids if the bids shall be deemed too high.

**History.** Acts 1879, No. 78, § 9, p. 117; C. & M. Dig., § 6827; Pope's Dig., § 4553; A.S.A. 1947, § 21-625.

#### 14-123-406. Bond of contractors.

The contractors shall give bond to the directors in a sum sufficient to secure the prompt execution of their contract, conditioned to pay any damages which shall result to the landholders of the district from a failure to perform their contracts or by reason of a negligent performance of the contract.

History. Acts 1879, No. 78, § 11, p. 117; Cross References. Contractors' bonds, C. & M. Dig., § 6828; Pope's Dig., § 4554; § 22-9-401 et seq. A.S.A. 1947, § 21-626.

### 14-123-407. Execution of work — Acceptance.

The work shall be done by contractors, under the supervision of the board of directors or any engineers to be selected by them and, when completed, if performed according to the terms of their contract and the plans and specifications submitted to the meeting of landholders, shall be received and accepted by the board of directors.

**History.** Acts 1879, No. 78, § 12, p. 117; C. & M. Dig., § 6829; Pope's Dig., § 4555; A.S.A. 1947, § 21-627.

# 14-123-408. Assessment for cost of work — Revision and delivery of lists.

(a) The board of assessors shall:

- (1) Make an assessment of the cost of the work upon the lands situated in the district benefited by the work and reported to the meeting of landholders upon the value of the lands as increased by the work; and
- (2) Also make a list of the lands as assessed, showing the owners' names, the description of the land, the number of acres, the valuation thereof as increased by the work, and the amounts of the assessments thereon.
- (b) The assessors and board of directors shall then go carefully over the list, descriptions, and valuations and make all necessary corrections in the description of the lands assessed, adding to the list any lands omitted and striking out any lands improperly assessed.

(c) Notice of the time and place of the revision shall be given by written or printed handbills posted in ten (10) public places in the district for ten (10) days prior thereto. At that time any person feeling himself aggrieved by the assessment may appear and have his com-

plaint heard and considered by the board of directors.

(d) The assessors shall make alterations and corrections in the list ordered by the board and shall then file the list in the clerk's office of the county court of the county. They shall also make a separate list thereof and deliver the separate list to the treasurer of the district. Both lists shall be signed by the assessors. For the purpose of ascertaining the description of any lands embraced in the district, the assessors and the owners of the land shall be governed by and subject to the provisions of § 26-26-717.

**History.** Acts 1879, No. 78, § 13, p. M. Dig., § 6830; Pope's Dig., § 4556; 117; 1887, No. 86, § 4, p. 132; 1889, No. A.S.A. 1947, § 21-628. 26, § 2, p. 27; 1897, No. 8, § 1, p. 8; C. &

#### CASE NOTES

#### **Enforcement of Assessments.**

In an action to enforce an assessment to build a levee, it is no defense that lands have not yet received any benefit from the levee, provided the lands would be benefited when the levee was completed according to the plans of the district; nor is it a defense that the levee was not properly constructed and affords no protection from overflow. Salmon v. Board of Directors, 100 Ark. 366, 140 S.W. 585 (1911).

# 14-123-409. Assessments as lien — Interest on delinquent assessments — Correcting errors.

(a) The assessments shall be a lien on all the lands of the district, in the nature of a mortgage, and shall bear interest at the rate of six percent (6%) per annum after thirty (30) days from the filing of the

assessments in the county clerk's office, and until paid.

(b) If at any time before judgment, in any foreclosure proceeding brought to enforce the lien, it shall appear that an error has been made in the description of any of the lands embraced in the assessment or lists, the error shall be at once corrected, and the correction shall have the effect in all respects as if the error had not existed.

**History.** Acts 1879, No. 78, § 13, p. 26, § 3, p. 27; C. & M. Dig., § 6831; Pope's 117; 1887, No. 86, § 5, p. 132; 1889, No. Dig., § 4557; A.S.A. 1947, § 21-629.

#### CASE NOTES

#### Statute of Limitations.

Delinquent assessments in a levee district are declared to be a lien on the lands which is not barred by the statute of

limitations. New Netherlands American Mtg. Bank v. Little Red River Levee Dist., 186 Ark. 965, 56 S.W.2d 1016 (1933).

## 14-123-410. Assessment of omitted lands.

(a) If, for any cause, any of the lands in any district now existing, or hereafter formed, has not been assessed or subjected to its proportional share of any work voted to be done, or to the annual tax provided in § 14-123-419, it shall be the duty of the assessors to at once make out and present lists to the board of directors, who shall examine the lists. They shall proceed to hear and determine all complaints respecting the lists, after notice to the owners as provided in § 14-123-408.

(b) The list shall then be filed in the clerk's office and with the board of directors, as provided in § 14-123-408, and shall constitute a lien on the lands to be enforced as if originally assessed as herein provided in

this chapter.

**History.** Acts 1889, No. 26, § 4, p. 27; C. & M. Dig., § 6832; Pope's Dig., § 4558; A.S.A. 1947, § 21-630.

## 14-123-411. Payment of assessments — Effect of delinquency.

(a) When the assessment list is delivered to the treasurer, he shall

proceed immediately to collect the assessments.

(b) If the assessments are not paid within thirty (30) days, a penalty of ten percent (10%) shall at once attach for the delinquency. The board of directors shall enforce the collection of the whole by chancery proceedings in a court of the county having chancery jurisdiction in which the lands are situated. The court shall give judgment against the persons claiming to be the owners of the land, if known to the board, for the amount of the assessment, the penalty of ten percent (10%), interest on the assessment from the end of the thirty (30) days allowed for the collection thereof at the rate of six percent (6%) per annum, and all costs of the proceedings.

(c) If the ownership of delinquent lands is unknown to the board, the lands may be proceeded against as set forth in this section for the collection of the assessments, penalty, interests, and costs due thereon,

as being owned by unknown owners.

- (d) The judgment shall provide for the sale of the delinquent lands for cash, by commissioner of the court, after advertisement as set out in this section.
- (e) The proceedings and judgment shall be in the nature of proceeding in rem, and it shall be immaterial that the ownership of the lands may be incorrectly alleged in the proceedings.

(f) The judgment shall be enforced wholly against the land and not

against any other property or estate of the defendant.

(g) All or any part of the delinquent lands in any levee district in one (1) county may be included in one (1) suit instituted for the collection of the delinquent assessments, etc., as aforesaid, and all delinquent owners of the land, including those unknown as aforesaid, may be included in the one (1) suit as defendant.

**History.** Acts 1879, No. 78, § 14, p. 117; 1887, No. 86, § 6, p. 132; 1897, No. 8, § 2, p. 8; C. & M. Dig., § 6836; Pope's Dig., § 4562; A.S.A. 1947, § 21-631.

Cross References. Payment of improvement district taxes with bonds of district, § 14-86-803.

Payment of levee and drainage taxes in instalments, § 14-120-110.

Remission of delinquent penalties in excess of 10 percent, § 14-86-1002.

Suit for collection of delinquent taxes, § 14-86-1106.

#### CASE NOTES

ANALYSIS

Improper assessments. Set-off.

Improper Assessments.

The fact the lands were improperly assessed for levee taxes and the taxes were from year to year paid to the collector by another did not estop the levee district which owned the land, nor its successor,

from asserting title. Miller v. Henry, 105 Ark. 261, 150 S.W. 700 (1912).

Where person paid levee taxes illegally assessed on land which had been taken by the levee district for levee purposes, he cannot recover such taxes, though he did not know how much of his land had been appropriated, since his payment was voluntary, and by refusing to pay he could have made his defense in the suit which

the district would have had to bring to collect the taxes. Chapman & Dewey Land Co. v. Board of Directors, 172 Ark. 414, 288 S.W. 910 (1926).

claim which the taxpayer may have against the levee district. Fitzhugh v. Cotton Belt Levee Dist., 54 Ark. 224, 15 S.W. 455 (1891).

### Set-off.

The assessment cannot be set off by a

# 14-123-412. Notice of pending suit in districts with five counties or less.

(a) In all suits brought by any levee district formed under the general statutes or under any special act of this state to enforce the collection of assessments, the levee district shall give notice of the pendency thereof as against all landowners, whether known or unknown, when the suits may be pending. Notice shall be given by publication weekly for four (4) weeks prior to the date of the term of court on which final judgment may be entered for the sale of land in the levee district on which the assessments are delinquent in some newspaper published in the county where the suit is pending, which public notice may be in the following form:

### "NOTICE

Levee District

VS.

**Delinquent Lands** 

The following named persons and corporations and all others having or claiming an interest in the following described lands are hereby notified that suit is pending in the Chancery Court of ........... County, Arkansas, to enforce the collection of certain levee assessments on the subjoined list of lands, each supposed owner's lands being set opposite his or her or its name, respectively, together with the amount severally due from each, to wit:

(Then shall follow a list of supposed owners, with descriptive list of said lands and amounts due thereon, respectively, as aforesaid).

Said public notice may be concluded in the following form:

Said persons and corporations and all others interested in said lands are hereby notified that they are required by law to appear and make defense to said suit, or the same will be taken for confessed, and final judgment will be entered directing the sale of said lands for the purpose of collecting said levee assessments, together with the payment of interest, penalty, and costs allowed by law.

Clerk of said Court."

(b) Where the owners are unknown, that fact shall be so stated in the published notice. Upon the giving of the notice of the pendency of the suit, no further notice shall be necessary to any landowner and personal summons against the landowner need not be served, and the suit shall stand for trial as now provided by law.

(c) All statutory provisions contrary to the terms of this section are amended to conform hereto. However, this section shall not apply to levee districts comprising lands located in more than five (5) counties.

**History.** Acts 1947, No. 141, §§ 1, 2; A.S.A. 1947, § 21-632.

# 14-123-413. Notice of pending suit generally.

(a) Notice of the pendency of the suit shall be given as against nonresidents of the county and unknown owners, respectively, when the suits may be pending, by publication weekly for four (4) weeks prior to the day of the term of court on which final judgment may be entered for the sale of the land, in some newspaper published in the county, where the suit may be pending, which public notice may be in the following form:

### "NOTICE

Levee District

VS.

**Delinquent Lands** 

The following named persons and corporations and all others having or claiming an interest in the following described lands, are hereby notified that suit is pending in the Chancery Court of .........County, Arkansas, to enforce the collection of certain levee assessments on the subjoined list of lands, each supposed owner's lands being set opposite his or her or its name, respectively, together with the amount severally due from each, to wit: (Then shall follow a list of supposed owners, with descriptive list of said lands and amounts due thereon, respectively, as aforesaid). Said public notice may be concluded in the following form:

Said persons and corporations and all others interested in said lands are hereby notified that they are required by law to appear and make defense to said suit, or the same will be taken for confessed, and final judgment will be entered directing the sale of said lands for the purpose of collecting said levee assessments, together with the payment of interest, penalty, and costs allowed by law.

Clerk of said Court."

(b) Where the owners are unknown, that fact shall be so stated in the published notice.

(c) As against any defendant who resides in the county where the suit may be brought and who appears by the lists of land made by the assessors and filed in the county clerk's office to be the owner of any of the land proceeded against, notice of the pending suit shall be given by the service of personal summons of the court at least twenty (20) days before the day on which the defendant is required to answer as set out in the summons.

History. Acts 1879, No. 78, § 14, p. 117; 1887, No. 86, § 6, p. 132; 1897, No. 8, § 2, p. 8; C. & M. Dig., § 6836; Pope's Dig., § 4562; A.S.A. 1947, § 21-631.

Publisher's Notes. This section, in so

delinquent assessments and provides for personal service on residents, is superseded by § 14-123-412 as to districts comprising five (5) counties or less.

far as it relates to the notice of suit for

### ublisher's reces. This section, in so

14-123-414. Trial date — Continuance.

# (a) The suit shall stand for trial at the first term of the court after complaint may be filed, if four (4) weeks in the case of a nonresident or unknown defendant as set out in § 14-123-413, or twenty (20) days in the case of resident defendants as set out in § 14-123-413, shall expire either before the first day of the term or during the term of the court to which the suits are brought, respectively, unless a continuance is granted for good cause shown within the discretion of the court.

(b) Continuances for good cause shown may be granted as to a part of the lands of defendants without affecting the duty of the court to dispose finally of the others as to whom no such continuances may be granted.

**History.** Acts 1879, No. 78, § 14, p. § 2, p. 8; C. & M. Dig., § 6836; Pope's 117; 1887, No. 86, § 6, p. 132; 1897, No. 8, Dig., § 4562; A.S.A. 1947, § 21-631.

### 14-123-415. Decree — Sale of land.

(a) In all cases where notice has been properly given as set out in § 14-123-413 and where no answer has been filed, or, if filed and the cause decided for the plaintiff, the court by its decree shall:

(1) Grant the relief as prayed in the complaint;

(2) Direct the commissioner to sell the land described in the decree at the courthouse door of the county wherein the decree is entered, at public outcry, to the highest bidder for cash in hand, after having first advertised the sale weekly for two (2) weeks, consecutively, in some newspaper published in the county, if there is one. If no newspaper is published in the county, then the advertisement shall be published in some newspaper of an adjoining county. The advertisement may include all the lands described in the decree.

(b) If all of the lands be not sold on the day as advertised, the sale

shall be continued from day to day until completed.

(c) The commissioner shall by proper deeds convey to the purchasers the lands so sold, and the titles to the lands shall thereupon become vested in the purchasers as against all others whomsoever, saving to infants and insane persons having no guardians or curators, but who now have the rights by law to appear and except to the proceedings within twelve (12) months after their disabilities are removed.

(d) In any case where lands are offered for sale by the commissioner as provided by this act, and the sum of the assessment due, together with interests, costs, and penalty, is not bid for the lands, the commissioner shall bid the lands off in the name of the plaintiff levee district, bidding therefor the whole amount due as aforesaid, and shall execute

his deed therefor, as in all other cases under this act, conveying the lands to the plaintiff levee district. The deed, when duly executed in conformity with the provisions of this act and recorded shall be received as evidence in all cases showing an indefeasible title in the purchasers, unassailable either in law or equity.

**History.** Acts 1879, No. 78, § 14, p. 117; 1887, No. 86, § 6, p. 132; 1897, No. 8, § 2, p. 8; C. & M. Dig., § 6836; Pope's Dig., § 4562; A.S.A. 1947, § 21-631.

**Meaning of "this act".** Acts 1897, No. 8, codified as §§ 14-123-310, 14-123-408,

14-123-411, and 14-123-413 — 14-123-418.

Cross References. Lien of district may be enforced notwithstanding tax sale to state, § 14-86-1601 et seq.

### **CASE NOTES**

ANALYSIS

Collateral attack.
Conclusiveness of decree.
Conclusiveness of sale.
Extinguishing liens.
Penalty.
Vesting of title.

### Collateral Attack.

A decree based upon constructive service enforcing a lien for levee taxes against unoccupied land of a nonresident owner is not open to collateral attack because the ownership is incorrectly alleged to be in a resident owner who actually has no interest therein. Crittenden Lumber Co. v. McDougal, 101 Ark. 390, 142 S.W. 836 (1911).

### Conclusiveness of Decree.

A decree enforcing levee taxes rendered upon due service is conclusive as to whether the taxes were due and unpaid. Board of Directors v. Fleming, 93 Ark. 490, 125 S.W. 132 (1910).

#### Conclusiveness of Sale.

Where the land of a nonresident was proceeded against for levee taxes and was sold under a decree which recited that published notice was given as required, such recital is conclusive upon a collateral proceeding. Pattison v. Smith, 94 Ark. 588, 127 S.W. 983 (1910).

District's failure to designate the true owner of the land does not affect the validity of foreclosure sale. Long Prairie Levee Dist. v. Wall, 227 Ark. 305, 298 S.W.2d 52 (1957).

Extinguishing Liens.

A decree confirming the state's tax title has the effect of suspending the enforcement of special improvement taxes against the lands during the time the title thereto remains in the state, but does not extinguish the lien of such taxes. Harris v. Little Red River Levee Dist., 188 Ark. 975, 69 S.W.2d 877 (1934).

One who purchases lands from the state after its title has been confirmed must pay the taxes due to levee and drainage districts to extinguish their liens. Harris v. Little Red River Levee Dist., 188 Ark. 975, 69 S.W.2d 877 (1934).

#### Penalty.

It is error to refuse to give judgment for the penalty. Overstreet v. Levee Dist. No. 1, 80 Ark. 462, 97 S.W. 676 (1906).

### Vesting of Title.

One who purchases land under a sale pursuant to a decree enforcing a lien for levee acquires at least a prima facie title which is good against all the world until overcome by one showing a better title. Robinson v. Cross, 98 Ark. 110, 134 S.W. 954 (1911).

Title to mineral interest in land vested in levee district through purchase of land in foreclosure suits brought for the collection of delinquent levee assessments where former owners instead of applying for relief stood by for more than 10 years and permitted the land to be sold to the district and the period of redemption to expire. Long Prairie Levee Dist. v. Wall, 227 Ark. 305, 298 S.W.2d 52 (1957).

# 14-123-416. Redemption.

However, at any time within two (2) years after the rendition of the final decree of the chancery court as provided in § 14-123-415, the owner of the lands may file his petition in the court rendering the decree alleging the payment of the assessments on the lands for which they were sold. Upon the establishment of that fact, the court shall vacate and set aside the decree.

**History.** Acts 1879, No. 78, § 14, p. 117; 1887, No. 86, § 6, p. 132; 1897, No. 8, § 2, p. 8; C. & M. Dig., § 6836; Pope's Dig., § 4562; A.S.A. 1947, § 21-631.

Cross References. Redemption of land, § 14-86-1105.

### CASE NOTES

Payment.

To redeem from drainage and levee taxes, a purchaser of the state's tax title must pay such improvement taxes accruing both before and after the state's tax title was acquired. Harris v. Little Red River Levee Dist., 188 Ark. 975, 69 S.W.2d 877 (1934).

Persons in possession of the land under color of title had the right to redeem the land by paying the amount prescribed. Beck v. DeFir, 227 Ark. 112, 296 S.W.2d 396 (1956).

### 14-123-417. Parties defendant.

All persons having any interest in the lands or recorded liens thereon, known to the directors, shall be made parties defendant to the suit and shall be bound thereby and by the judgment and decree rendered therein.

**History.** Acts 1879, No. 78, § 15, p. § 3, p. 8; C. & M. Dig., § 6837; Pope's 117; 1887, No. 86, § 7, p. 132; 1897, No. 8, Dig., § 4563; A.S.A. 1947, § 21-633.

# 14-123-418. Trial procedure.

(a) Suits shall be conducted in accordance with the practice and proceedings of chancery courts in this state, except as herein otherwise provided, and except:

(1) Neither attorneys for nonresident defendants nor guardians ad litem, nor any provision of § 16-65-403 [repealed] shall be required;

and

(2) Suits may be disposed of on oral testimony as in ordinary suits at law; and

(3) This law shall be liberally construed to give the assessment lists the effect of bona fide mortgages for a valuable consideration, and a first lien upon the lands as against all persons having any interest therein.

(b) No informality or irregularity in holding the meetings, or in the description or valuation of the lands, or in the names of the owners, or the number of acres therein, shall be valid defense to the action.

(c) This act shall apply to all suits that may be brought for the collection of assessments heretofore levied that may be brought after the passage of this act.

**History.** Acts 1879, No. 78, § 16, p. 117; 1887, No. 86, § 8, p. 132; 1897, No. 8, § 4, p. 8; C. & M. Dig., § 6838; Pope's Dig., § 4564; A.S.A. 1947, § 21-634.

**Publisher's Notes.** In reference to the term "passage of this act," Acts 1897, No. 8, was signed by the Governor and became

effective on February 6, 1897.

Meaning of "this act". See note to \$ 14-123-415.

Cross References. Payment of levee and drainage taxes in instalments, § 14-120-110.

### CASE NOTES

**Cited:** Davidson v. Hartsfield, 250 Ark. 1072, 468 S.W.2d 774 (1971).

### 14-123-419. Annual tax.

For the purpose of paying the expenses mentioned in § 14-123-316, for keeping the levees in each district in repair, and to meet the incidental and contingent expenses of the district, there shall be levied and collected off the lands as reported as benefited by the assessors an annual tax not to exceed five (5) mills on the dollar of the value of the lands as assessed for state and county purposes, to be levied, extended, and collected as state and county taxes are now collected by the officer authorized to levy and collect the tax. The taxes shall be extended on the tax books of the county against the lands so taxable as aforesaid, and to be paid over by the county collector to the treasurer of the levee district in coin or legal tender currency of the United States. The amount of the tax, not exceeding the rate percent aforesaid, shall be voted on at a meeting of the landholders of the district called by notice given as required by § 14-123-403, and the tax so certified to the county court of the county by the directors of the district on or before the day fixed by law for levying county and state taxes and making annual appropriations for the county.

**History.** Acts 1879, No. 78, § 20, p. § 6843; Pope's Dig., § 4569; A.S.A. 1947, 117; 1895, No. 26, § 2, p. 30; C. & M. Dig., § 21-635.

# 14-123-420. Protection of persons injured by change of levee location.

(a) In all cases where the board of directors or commissioners of any levee district has, prior or subsequent to the passage of this act, agreed, contracted, or promised, formally or informally, to pay any landowner or landowners for damages to land caused by withdrawal of levee protection therefrom, or by enclosing the land within a loop or circle of the levee, or surrounding the land by the levee, the agreement, contract, promise, or understanding, when evidenced by a writing, whether a formal contract or a resolution of the board or other instrument, shall

be valid and enforceable between the parties, except as to the amount of the damages, and amount of the damages which the landowner or landowners will sustain by reason of a change of the levee as provided in this section shall be assessed in the manner provided by Acts 1905, No. 53 [repealed].

(b) Damage shall include all damages which will result from the change in the position of the levee including injuries to natural and artificial drainage, withdrawal of levee protection therefrom, enclosing the lands within a loop or circle of the levees surrounding the lands by the levee, the inconvenience in passing over the levees, injury to crops and houses on the right-of-way injured or destroyed by the reconstruction of the levees, and any other damages which may be caused by the change in the location of the levees.

(c) The damages shall be recoverable, although the change in the levee may have been made upon the request of the federal government under and by virtue of the powers vested in it by the acts of Congress

called "Flood Control."

**History.** Acts 1932 (2nd Ex. Sess.), No. 14, §§ 1, 2, p. 31; Pope's Dig., §§ 4579, 4580; A.S.A. 1947, § 21-636.

Publisher's Notes. In reference to the term "passage of this act," Acts 1932 (2nd Ex. Sess.), No. 14, was signed by the Governor and became effective on April 14, 1932.

Acts 1905, No. 53, referred to in this

section, was superseded by Acts 1945, No. 177, which is codified as §§ 18-15-1001 — 18-15-1010. Acts 1905, No. 53, was subsequently repealed by Acts 1953, No. 62, § 1.

U.S. Code. The Flood Control Acts of Congress referred to in this section are codified primarily as 33 U.S.C. § 701 et seq.

#### **CASE NOTES**

ANALYSIS

Agreements. Settlements.

Agreements.

The legislature, having passed this section, could validate, by subsequent legislation, a contract by the levee district to pay damages for the withdrawal of levee protection to a landowner who had paid levee taxes for 30 years. Howington v. Friend, 187 Ark. 411, 61 S.W.2d 62 (1933).

Where an assessment of damages for the withdrawal of levee protection made by appraisers was accepted by the landowners and the directors of the district agreed to pay the assessment before the passage of this section, the agreement was validated by this section, and a later resolution of the directors was merely a recognition and compromise of the original agreement. Crain v. Board of Directors, 190 Ark. 305, 79 S.W.2d 87 (1935).

#### Settlements.

Settlement between district and landowner for construction of setback levee did not bar suit for damages by landowner against district as result of old levee being removed where parties had made prior settlement with understanding that old levee would be retained. White River Levee Dist. v. Beeman, 219 Ark. 935, 245 S.W.2d 807 (1952).

**Cited:** Gladish v. Drainage Dist. No. 17, 217 Ark. 411, 230 S.W.2d 490 (1950).

# 14-123-421. Authority to issue remaining bonds.

- (a) Any levee district in the State of Arkansas, organized under general or special laws, which has not yet issued and sold all the bonds authorized to be issued by the district or by its board of directors or commissioners, may issue, in its own name or in the name of its board of directors or commissioners, as directed by the laws authorizing their issuance, the remaining bonds authorized in serial form and with such maturities as the board of directors or commissioners may determine to be for the best interests of the district.
- (b) The bonds may be made registrable as to principal only at the option of the holder or holders and may be made callable at the option of the board of directors or board of commissioners at any time to be fixed by the board.

**History.** Acts 1934 (3rd Ex. Sess.), No. 5, § 1; Pope's Dig., § 4572; A.S.A. 1947, § 21-637.

### CASE NOTES

Damages.

Where the amount of damages to be sustained by a levee district in acquiring a right-of-way needed in relocating its foundation had been ascertained, the district,

needing money to pay therefor, was authorized to pay for the land by issuing its bonds at par to the landowners. Hornor v. Craggs, 185 Ark. 1155, 51 S.W.2d 861 (1932) (decision under prior law).

# 14-123-422. Report of state lands sold by levee districts.

- (a) On or before May 1 in each year after the passage of this act, the president and secretary of each of the levee boards created under the laws of this state and holding lands by virtue of any acts passed by the General Assembly of the State of Arkansas, donating lands to the several levee districts in the state, shall file with the Commissioner of State Lands a list of all lands disposed of by their respective boards the preceding year, showing the sections or parts of sections disposed of, the respective purchasers of each tract, and the date of sale. The first report shall contain a list showing a description of all the lands previously sold and the respective purchasers of each tract.
- (b) Upon receipt of the report, it shall be the duty of the Commissioner of State Lands to certify down to the clerks of the respective counties, a list of all lands sold, to the end that they may be listed for taxation.
- (c) Upon failure of any levee board or boards to comply with subsection (a) of this section, the clerks of the respective counties in which the lands of the district or districts are situated shall list all of the lands of the district or districts for taxation, and the lands shall be taxed as lands of all private individuals, corporations, and companies.

**History.** Acts 1901, No. 94, §§ 1-3, p. Dig., §§ 8616, 13694; A.S.A. 1947, §§ 21-160; C. & M. Dig., §§ 6585, 9927; Pope's 641 — 21-643.

Publisher's Notes. In reference to the term "passage of this act," Acts 1901, No.

94, was signed by the Governor and became effective on April 11, 1901.

### Subchapter 5 — Districts in Four or More Counties

SECTION.

14-123-501. Directors.

14-123-502. Compensation of officers, employees, etc.

14-123-503. Tax collectors and assessors generally.

SECTION.

14-123-504. Tax collector's bond.

14-123-505. Remittance by tax collector.

14-123-506. Tax collector's report — Final settlement.

14-123-507. List of uncollected taxes.

Effective Dates. Acts 1929, No. 75, § 6: approved Mar. 2, 1929. Emergency clause provided: "It is ascertained that the affairs and needs of large levee districts, which are quasi-public corporations and agencies, demand a reorganization of their boards of directors on a more representative basis, in order to function more successfully; that delay in such reorganization will greatly impair the efficacy of such agencies; and that the immediate operation of this act is imperative. An emergency is therefore declared, and this act shall take effect and be in force from and after its passage."

Acts 1951, No. 126, § 3: approved Feb. 20, 1951. Emergency clause provided: "It is ascertained and hereby declared that in levee districts in which compensation of officers, employees, tax collectors and assessors is fixed by legislative act, the compensation paid to such officers, employees, tax collectors and assessors is not commensurate with the services rendered. thereby impairing the successful operation of such districts. An emergency is therefore declared to exist and this Act shall take effect and be in full force from and after its passage."

Acts 1967, No. 57, § 3: approved Feb. 9,

1967. Emergency clause provided: "It is ascertained and hereby declared that in levee districts in which the compensation of officers, employees, tax collectors and assessors and the per diem of its members are fixed by legislative acts, the compensation and per diem paid is not commensurate with the services rendered, thereby impairing the efficient operation of such districts. An emergency is therefore declared to exist and this Act shall take effect and be in full force and effect from and after its passage."

Acts 1981, No. 968, § 4: became law

without Governor's signature, Apr. 8, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that Section 1 of Act 75 of 1929 requires that any county having lands that lie in certain levee districts, which are not now assessed for levee taxes, must have one (1) levee director, and that such law is inequitable, and that this Act is immediately necessary to eliminate such inequity. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

### 14-123-501. Directors.

(a)(1) The board of directors of any levee district embracing lands in four (4) or more counties shall consist of one (1) director for every one hundred thousand (100,000) acres, and for a fraction or more than fifty thousand (50,000) acres, of lands on which taxes are assessed by the district in each of the respective counties. However, any county which has more than one hundred thousand (100,000) acres and less than one hundred fifty thousand (150,000) acres embraced in any levee district, subject to a levee tax, shall have two (2) levee directors.

- (2) This subsection is not intended to cut short the term of any member of the board of directors of any levee district, but is intended to eliminate the requirement that any county having lands embraced in a levee district under this section of which are not assessed for levee taxes have one (1) levee director, provided that provision is only to be eliminated upon the expiration of the term of the levee director or if a vacancy occurs in that levee director's office prior to the expiration of his term, that position shall then be abolished.
- (b)(1) The Governor shall appoint directors in conformity to this section for existing districts, who shall serve for a term of four (4) years and until their successors are elected and qualified.
- (2) On the first Monday in November 1933 and every (4) years thereafter, one (1) director shall be elected from each county or division, as the case may be, in the manner provided by law, who shall serve for a term of four (4) years and until his successor is elected and qualified.
- (c) Any resident of a county whose lands are embraced in any levee district and is otherwise eligible to serve as a levee director shall not be required to reside in the land embraced in the levee district division of the county.
- (d) The directors shall organize by electing one (1) of their number as president.
- (e) They shall also employ other officers and employees as are necessary in the discretion of the board.
  - (f) The new board shall be the legal successor to the old.

**History.** Acts 1929, No. 75, §§ 1-4; 968, §§ 1, 2; A.S.A. 1947, §§ 21-644 — Pope's Dig., §§ 4592-4595; Acts 1981, No. 21-647.

# 14-123-502. Compensation of officers, employees, etc.

- (a) The board of directors or board of commissioners of levee districts embracing land in four (4) or more counties within the state shall have the power to fix the amount of compensation to be paid to all officers, employees, tax collectors, and assessors of the district and to fix the amount of per diem to be paid to members of the board of directors for attendance at all meetings.
- (b) "Compensation" means all salaries, retirement allowances, group insurance, medical benefits, work uniforms, meals, housing, and anything else of value that the district provides in return for the work done by its officers and employees.

**History.** Acts 1951, No. 126, § 1; 1957, No. 98, § 1; 1967, No. 57, § 1; A.S.A. 1947, §§ 21-648, 21-648.1.

#### CASE NOTES

#### Retirement Plans.

Levee district did not have authority to put into effect retirement plan for officers and employees. Daggett v. St. Francis Levee Dist., 226 Ark. 545, 291 S.W.2d 254 (1956).

# 14-123-503. Tax collectors and assessors generally.

The board of directors or board of commissioners of levee districts embracing lands in four (4) or more counties within the state shall appoint tax collectors and assessors for each county within the district as is now provided by existing laws, but no tax collector or assessor shall be related by blood or marriage within the fourth degree to any member of the board of directors of such levee district.

**History.** Acts 1951, No. 86, § 1; A.S.A. 1947, § 21-649.

### 14-123-504. Tax collector's bond.

(a) The tax collectors in all levee districts embracing land in four (4) or more counties within the state shall each give bond, payable to the president of the board of levee directors, and his successors in office, in an amount to be fixed by the board of directors of the levee district.

(b) The bond shall be executed by the collector as principal and by some surety company authorized to do business in the State of Arkan-

sas as surety.

(c) The treasurer of the board of directors of the levee district is authorized to pay the premiums on the bonds with funds of the levee district.

**History.** Acts 1951, No. 85, § 1; A.S.A. 1947, § 21-650.

# 14-123-505. Remittance by tax collector.

During the period permitted for the collection of levee taxes in levee districts embracing lands in four (4) or more counties within the state, each tax collector shall make remittance of all collections to the treasurer of the board of directors every ten (10) days or more often if required by the board of directors to do so.

**History.** Acts 1951, No. 86, § 2; A.S.A. 1947, § 21-651.

# 14-123-506. Tax collector's report — Final settlement.

(a) When the time for payment of levee taxes as provided by law shall have expired, the several collectors of taxes shall cease to collect the taxes and shall at once make up a report to the board of directors of the district of all taxes collected for the current year.

(b) This report, together with the tax books, shall be delivered by the collector to the board on or before December 15. At the time of delivery of the report and tax books, the collector shall make final settlement

with the board for all taxes collected during the current year.

(c) If any such collector shall fail to make final settlement within the time herein fixed, he shall be chargeable with a penalty for each day that he may be delinquent with the settlement, in a sum equal to five

percent (5%) of the amount of compensation to which he would otherwise be entitled.

**History.** Acts 1951, No. 86, § 3; A.S.A. 1947, § 21-652.

### 14-123-507. List of uncollected taxes.

(a) The collector shall also file with the clerk of the chancery court of the county for which he is collector of levee taxes, at the time as is now required by law, a list of all uncollected levee taxes, showing thereon the name of the supposed owner, the description of the delinquent property, the amount of the uncollected tax, and all penalties.

(b) The list shall have affixed thereto an affidavit of the collector

verifying its correctness.

(c) The collector shall also deliver a copy of the list to the secretary of the levee district.

**History.** Acts 1951, No. 86, § 4; A.S.A. 1947, § 21-653.

### **CHAPTER 124**

# ALTERNATIVE METHOD OF ASSESSMENT AND COLLECTION OF TAXES IN LEVEE IMPROVEMENT DISTRICTS OF MORE THAN ONE COUNTY

SECTION.	SECTION.
14-124-101. Resolution required.	cording to benefits accru-
14-124-102. Appointment of assessor in	ing.
each county.	14-124-109. Chancery court review of as-
14-124-103. Filing assessment.	sessment.
14-124-104. Calling a meeting of asses-	14-124-110. Petition for review.
sors — Creation of board of	14-124-111. Hearing — District assess-
assessment and equaliza-	ment conclusive in ab-
tion.	sence of review.
14-124-105. Notice of meeting.	14-124-112. Certification of assessment.
14-124-106. Organization of board —	14-124-113. Appeal to Supreme Court.
Record of proceedings.	14-124-114. Suits to collect taxes.
14-124-107. Powers and duties of board.	14-124-115. Levy of tax — Limitation on
14-124-108. Units for assessment pur-	rate.
poses — Assessments ac-	14-124-116. Tax as lien.

**Cross References.** Partition of assessments among several owners of a single tract, § 14-86-601.

Publication of notice, § 16-3-101 et seq. Reassessment of benefits, §§ 14-120-108, 14-120-109.

### 14-124-101. Resolution required.

This subchapter shall not be in force as to any district until a proper resolution to that effect is adopted by the board of directors of the district, and a copy of the resolution is published in a newspaper in each county which, or a part of which, is embraced in the levee district.

History. Acts 1941, No. 287, § 16; A.S.A. 1947, § 21-716.

# 14-124-102. Appointment of assessor in each county.

The board of directors or commissioners of levee districts embracing parts of more than one (1) county, at an annual meeting or at a special meeting called for the purpose, shall appoint a landowner in each county or part of a county in the levee district who shall assess the annual benefit accruing by reason of levee protection to the lands, town lots, suburban lots, rural lots, industrial plants, railroads, tramroads, telegraph and telephone lines, electric high power lines in his county or part of a county in books to be furnished by the levee district for that purpose.

History. Acts 1941, No. 287, § 1; A.S.A. 1947, § 21-701.

# 14-124-103. Filing assessment.

Each assessor, on completing his assessment, shall file it in the office of the board of directors or commissioners at the domicile of the district, where it shall be open to public inspection.

History. Acts 1941, No. 287, § 2; A.S.A. 1947, § 21-702.

### 14-124-104. Calling a meeting of assessors — Creation of board of assessment and equalization.

When all the assessments have been filed, the president of the levee district shall call a meeting of the assessors to be held in the office of the district at its domicile to sit as a board of assessment and equalization.

History. Acts 1941, No. 287, § 3; A.S.A. 1947, § 21-703.

# 14-124-105. Notice of meeting.

Notice of the time and place of the meeting shall be published once a week for two (2) consecutive weeks in some newspaper in each county

which, or a part of which, is embraced in the levee district:

(1) Notifying all property owners that at the meeting the board of assessment and equalization would sit to correct all wrongful or erroneous assessments and to equalize the assessments throughout the district: and

(2) Calling on all persons who are or may be aggrieved by the assessment of their property, or of the various classes of property, to appear and present their grievances and otherwise protect their interest.

**History.** Acts 1941, No. 287, § 4; A.S.A. 1947, § 21-704.

# 14-124-106. Organization of board — Record of proceedings.

(a) The assessors shall meet as a board of assessment and equalization at the time and place specified in the notice and shall elect one (1) of their members as chairman and another as secretary.

(b) The levee district shall furnish a stenographer who shall take and

transcribe all the testimony introduced before the board.

(c) The board shall keep a true and perfect record of its proceedings which shall be filed as a public record in the office of the levee district.

(d) A copy of the record, certified by the secretary of the levee district, shall be competent evidence in the courts.

**History.** Acts 1941, No. 287, § 5; A.S.A. 1947, § 21-705.

### 14-124-107. Powers and duties of board.

(a) The board shall:

(1) Hear all complaints filed before it, which shall be in writing;

(2) Correct all wrongful or erroneous assessments; and

- (3) Equalize the assessments of all classes of property throughout the district so as to make them uniform.
- (b) The board shall have the power to lower assessments that are intrinsically or relatively too high and to raise assessments that are intrinsically or relatively too low.

(c) Inequalities among assessments in one (1) class shall not be ground of complaint by property owners in another class if the class as a whole bears its just proportion of the burden of levee protection.

- (d) When an assessment is made and equalized as provided in this chapter, it shall remain the assessment for the district until a new assessment is made pursuant to an order of the board of directors or commissioners.
- (e) The assessment books for the several counties shall be corrected to conform to the action of the board.

**History.** Acts 1941, No. 287, § 6; A.S.A. 1947, § 21-706.

# 14-124-108. Units for assessment purposes — Assessments according to benefits accruing.

(a) The assessors for the several counties and the board of assessment and equalization may adopt such units for assessment purposes as they deem practicable and advisable, such as the acre for rural lands; the lot for real estate in cities, towns, and villages; the plant and the land on which it is located for industrial properties; and the mile for railroads, tramroads, telegraph and telephone lines, electric high power lines, and rural electrification lines.

(b) They shall assess the properties in each class according to the special benefits which accrue by reason of levee protection to property

of the character embraced in the particular class.

**History.** Acts 1941, No. 287, § 7; A.S.A. 1947, § 21-707.

# 14-124-109. Chancery court review of assessment.

(a) Any person aggrieved by an assessment made or equalized by the board of assessment and equalization may have the assessment reviewed by the chancery court of the county in which the property is situated or by the chancery court of the county in which the district has its domicile if the property involved is in more than one (1) county.

(b) Review shall be heard on the evidence introduced before the board of assessment and equalization. No additional or different evidence shall be admissible except on an issue of corrupt purpose or fraudulent action on the part of the board of assessment and equalization resulting in a wrongful and discriminatory assessment.

(c) The right of review provided herein shall be construed to be a part of the administrative remedy for relief from wrongful or erroneous

assessments.

**History.** Acts 1941, No. 287, § 8; A.S.A. 1947, § 21-708.

# 14-124-110. Petition for review.

The petition for review shall be filed within thirty (30) days from the date when the assessment is completed and would, except for the purpose of review, become effective. A copy of the petition shall be delivered to the president of the district, or to the chairman of its board of directors or commissioners.

**History.** Acts 1941, No. 287, § 9; A.S.A. 1947, § 21-709.

# 14-124-111. Hearing — District assessment conclusive in absence of review.

(a) The court shall hear the petition as expeditiously as possible, and it shall have the power to lower, raise, equalize, and determine the proper amount of benefit assessable against the property described in the petition.

(b) The amount and legality of an assessment made by any district,

in the absence of a petition for a review, shall be conclusive.

**History.** Acts 1941, No. 287, § 10; A.S.A. 1947, § 21-710.

### 14-124-112. Certification of assessment.

As soon as the court determines the proper assessment of benefits under any petition pending before it, the clerk of the court shall promptly certify such assessment to the district, so that the district taxes may be extended against it.

**History.** Acts 1941, No. 287, § 11; A.S.A. 1947, § 21-711.

# 14-124-113. Appeal to Supreme Court.

(a) An appeal may be prosecuted from the assessment as fixed by the court, but the transcript shall be filed with the Clerk of the Supreme Court within sixty (60) days from the rendition of the decree of the chancery court.

(b) The Supreme Court shall advance the appeal on its docket as

involving a matter of public interest.

**History.** Acts 1941, No. 287, § 12; A.S.A. 1947, § 21-712.

# 14-124-114. Suits to collect taxes.

In suits by a levee district to collect taxes on any property in the custody of a court other than that in which the tax suit is brought, the decree shall simply be for the amount of the tax adjudged to be due. The district shall file a certified copy of the decree in the court having the custody of the property for appropriate action for the payment of the tax.

**History.** Acts 1941, No. 287, § 13; A.S.A. 1947, § 21-713.

### 14-124-115. Levy of tax — Limitation on rate.

(a) The board of directors or commissioners shall annually, at a regular meeting or at a special meeting called for that purpose, levy a tax on the benefits as assessed and equalized by the board of assessment and equalization.

(b) The rate of the tax shall be subject to the limitation, for the equal protection of all classes of property, that the tax on rural lands according to the rate shall not exceed twenty-five cents  $(25\phi)$  an acre.

**History.** Acts 1941, No. 287, § 14; A.S.A. 1947, § 21-714.

### 14-124-116. Tax as lien.

The tax shall constitute a lien on the property in the district, shall be payable at the time and subject to the penalties for nonpayment, and shall be collected, except as specified in this chapter, in the manner provided by law.

**History.** Acts 1941, No. 287, § 15; A.S.A. 1947, § 21-715.

### **CHAPTER 125**

### CONSERVATION DISTRICTS LAW

#### SUBCHAPTER.

SECTION

- 1. GENERAL PROVISIONS.
- 2. DISTRICT ORGANIZATION.
- 3. Board of Directors.
- 4. Division or Combination of Districts.
- 5. LAND-USE REGULATIONS.
- 6. IMPROVEMENT PLANS.
- 7. Taxes and Assessments.
- 8. Bonds and Evidences of Indebtedness.
- 9. DISCONTINUANCE OF DISTRICTS.

# Subchapter 1 — General Provisions

SECTION.

14-125-101.	Title.	14-125-106.	Definitions.
14-125-102.	Legislative determination —	14-125-107.	Chapter controlling.
	Soil condition.	14-125-108.	Development of soil conser-
14-125-103.	Legislative determination —		vation program — Powers
	Consequences of erosion.		and duties of commission.
14-125-104.	Legislative determination —	14-125-109.	Payments made to district by
	Improvements.		commission.
14-125-105.	Legislative policy.		

**Effective Dates.** Acts 1963, No. 14, §§ 11-17, 20: Feb. 8, 1963. Sections 11-17 effective Apr. 1, 1963. Emergency clause

provided: "It has been found that notwithstanding the fact that the Commission will not have the functions performable by it hereunder until April 1, 1963, it is necessary that immediate action be taken by the Governor to appoint, and by the Senate to confirm the appointment of, the members of the Commission in order that the Commission may organize and begin to prepare its plan of operations so that there may be no disruption of service on and after that date, and that only by the immediate operation of this act may such condition be obviated. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall

take effect and be in full force from and after its passage and approval."

Acts 1973, No. 140, § 4: Feb. 16, 1973. Emergency clause provided: "It is found and is hereby declared by the General Assembly of the State of Arkansas that conservation district elections are scheduled to be held in many districts throughout the State of Arkansas in March, 1973, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

### RESEARCH REFERENCES

**ALR.** Local use zoning of wetlands or flood plain as taking without compensation. 19 ALR 4th 756.

### 14-125-101. Title.

This chapter may be known and cited as the "Conservation Districts Law."

**History.** Acts 1937, No. 197, § 1; § 12; 1969, No. 181, § 1; A.S.A. 1947, Pope's Dig., § 11833; Acts 1963, No. 14, § 9-901.

# 14-125-102. Legislative determination — Soil condition.

It is declared, as a matter of legislative determination:

(1) That the farm and grazing lands of the State of Arkansas are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people;

(2) That improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the farm and grazing lands of this state by water and

wind;

- (3) That the breaking of natural grass, plant, and forest cover have interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus and developing a soil condition that favors erosion;
- (4) That the topsoil is being washed and blown out of the fields and pastures;
  - (5) That there has been an accelerated washing of sloping fields;
- (6) That these processes of erosion by water and wind speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil;
- (7) That failure by any landowner to conserve the soil and control erosion upon his lands causes a washing and blowing of soil and water

from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible.

History. Acts 1937, No. 197, § 2; Pope's Dig., § 11834; A.S.A. 1947, § 9-902.

### 14-125-103. Legislative determination — Consequences of erosion.

It is declared, as a matter of legislative determination, that the consequences of soil erosion in the form of soil-washing and soil-blowing are:

(1) The silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors:

(2) The loss of fertile soil material in dust storms;

- (3) The piling up of soil on lower slopes and its deposit over alluvial plains;
- (4) The reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills:
- (5) Deterioration of soil and its fertility, deterioration of crops grown thereon, and declining acre yields despite development of scientific processes for increasing such yields;

(6) Loss of soil and water which causes destruction of food and cover for wildlife:

- (7) A washing and blowing of soil into streams which silts over spawning beds and destroys water plants, diminishing the food supply of fish;
- (8) A diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop failures:
- (9) An increase in the speed and volume of rainfall runoff, causing severe and increasing floods, which bring suffering, disease, and death;
- (10) Impoverishment of families attempting to farm eroding and eroded lands:
- (11) Damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms; and
- (12) Losses in navigation, hydroelectric power, municipal water supply, irrigation developments, farming, and grazing.

History. Acts 1937, No. 197, § 2; Pope's Dig., § 11834; A.S.A. 1947, § 9-902.

# 14-125-104. Legislative determination — Improvements.

It is declared, as a matter of legislative determination, that to control and prevent soil erosion, to prevent floodwater and sediment damages, and to further the conservation, development, and utilization of soil and water resources and the disposal of water, it is necessary:

(1) That land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued, and appropriate soil-conserving land-use practices and works of improvement for flood prevention or the conservation, development, and utilization of soil and water resources and the disposal of water be adopted and carried out;

(2) That among the works of improvement and procedures needed

are:

- (A) The carrying on of engineering operations such as the construction of terraces, terrace outlets, check dams, desilting basins, floodwater-retarding structures, channel improvements, floodways, dikes, ponds, ditches, and the like;
  - (B) The utilization of strip cropping, lister furrowing, contour

cultivating, and contour furrowing;

(C) Land drainage;(D) Land irrigation;

- (E) Seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses;
  - (F) Forestation and reforestation;

(G) Rotation of crops;

(H) Soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops;

(I) Retardation of run-off of increasing absorption of rainfall;

(J) Retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded;

(K) Fish and wildlife or recreational developments;

(L) The storage, transportation, and sale of water for irrigation, municipal or industrial water supply purposes; and

(M) Rural domestic water supply systems.

**History.** Acts 1937, No. 197, § 2; Pope's Dig., § 11834; Acts 1965, No. 424, § 1; A.S.A. 1947, § 9-902.

# 14-125-105. Legislative policy.

It is declared to be the policy of the General Assembly to provide for the control and prevention of soil erosion, for the prevention of floodwater and sediment damages, and for furthering the conservation, development, and utilization of soil and water resources and the disposal of water, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.

**History.** Acts 1937, No. 197, § 2; Pope's Dig., § 11834; Acts 1965, No. 424, § 1; A.S.A. 1947, § 9-902.

### 14-125-106. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "District," "conservation district," "soil conservation district," or "soil and water conservation district" means a governmental subdivision of this state and a public body, corporate and politic, organized in accordance with the provisions of this chapter for the purposes, with the powers, and subject to the provisions, herein set forth. All districts created under this chapter shall be known as conservation districts and shall have all the powers and duties set out in this chapter;

(2) "Director" means one (1) of the members of the governing body of a district, elected or appointed in accordance with the provisions of this

chapter;

(3) "Petition" means a petition filed under the provisions of § 14-125-

**201** for the creation of a district;

(4) "Nominating petition" means a petition filed under the provisions of § 14-125-302 to nominate candidates for the office of director of a soil conservation district;

(5) "State" means the State of Arkansas;

(6) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of

the government of this state;

(7) "United States" or "agencies of the United States" includes the United States of America, the Soil Conservation Service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America;

(8) "Government" or "governmental" includes the government of this state, the Government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them;

(9) "Landowner" or "owner of land" includes any person, firm, or corporation who shall hold title to or shall have contracted to purchase any lands lying within a district organized under the provisions of this

chapter:

(10) "Due notice" means notice published at least twice, with an interval of at least seven (7) days between the two (2) publication dates, in a newspaper or other publication of general circulation within the appropriate area, or posted at a reasonable number of conspicuous places within the appropriate areas. This posting shall include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to the notice, at the time and place designated in the notice, adjournment may be made from time to time without the necessity of renewing the notice for the adjourned dates;

(11) "Plan for works of improvement" or "improvement plan" means a plan for works of improvement, adopted by the board of directors of a district and approved by the chancery court, for an improvement project area established under this chapter;

(12) "Improvement project area" or "project area" means an area established under the provisions of this chapter within a soil and water conservation district or districts for the carrying out of a plan for works

of improvement;

(13) "Qualified elector" means any owner of land within the district who is registered to vote under the election laws of the State of Arkansas.

**History.** Acts 1937, No. 197, § 3; § 13; 1965, No. 424, § 2; 1969, No. 181, Pope's Dig., § 11835; Acts 1963, No. 14, § 2; A.S.A. 1947, § 9-903.

# 14-125-107. Chapter controlling.

Insofar as any of the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling.

**History.** Acts 1937, No. 197, § 14; A.S.A. 1947, § 9-913n.

# 14-125-108. Development of soil conservation program — Powers and duties of commission.

(a) The commission in cooperation with the land grant college in the state shall develop a program for soil conservation and for other purposes as provided for in this chapter, which shall be recognized as the state's policy in soil conservation. It may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under this chapter.

(b) The Arkansas Soil and Water Conservation Commission may employ technical experts and other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications and duties. The commission may call upon the Attorney General of the state for the legal services it may require. It shall have authority to delegate to its chairman, to one (1) or more of its members, or to one (1) or more agents or employees such powers and duties as it may deem proper. Upon request of the commission for the purpose of carrying out any of its functions, the supervising officer of any state agency, or of any state institution of learning may, insofar as may be possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the commission members of the staff or personnel of the agency or institution of learning, and make special reports, surveys, or studies as the commission may request.

(c) In addition to the duties and powers hereinafter conferred upon the Arkansas Soil and Water Conservation Commission, it shall have

the following duties and powers:

(1) To offer such assistance as may be appropriate to the directors of soil conservation districts, organized as provided hereinafter, in the

carrying out of any of their powers and programs;

(2) To keep the directors of each of the several districts organized under the provisions of this chapter informed of the activities and experience of all other districts organized hereunder and to facilitate an interchange of advice and experience between the districts and cooperation between them;

(3) To coordinate the programs of the several soil conservation districts organized hereunder so far as this may be done by advice and

consultation;

- (4) To secure the cooperation and assistance of the United States and of any of its agencies, and of agencies of this state, in the work of the districts;
- (5) To disseminate information throughout the state concerning the activities and programs of the soil conservation districts organized hereunder and to encourage the formation of the districts in areas where their organization is desirable.

**History.** Acts 1937, No. 197, § 4; § 18; 1973, No. 140, § 1; A.S.A. 1947, Pope's Dig., § 11836; Acts 1963, No. 14, § 9-904.

# 14-125-109. Payments made to district by commission.

(a) For the purpose of aiding the development and general operation of the respective soil conservation districts of this state, the Soil and Water Conservation Commission is authorized to make payments to the districts from time to time from funds appropriated for that purpose. All payments made to soil conservation districts shall be used for the purposes authorized by law, and no payments may be made to any district that does not comply with the provisions of this section.

(b)(1) Whenever the General Assembly shall have appropriated funds to be used for making payments as authorized by this section, the Soil and Water Conservation Commission shall annually through its designated employee give notice to all soil conservation districts of this state that applications for payments will be received by the commission on or before a date designated by the commission, which date shall be at least thirty (30) days after the date of notice.

(2) Any soil conservation district desiring to receive payments under the provisions of this section shall make application therefor upon forms furnished by the commission and shall return the application to

the commission on or before the date specified by the commission.

(3) All applications for payments shall be signed and verified by the chairman and secretary of the board of directors of the soil conservation district.

(4) The application form shall contain a statement that the signers thereof understand the purposes for which payments will be received and that they agree to use the payments for the purpose for which they are made and will be held accountable for any misuse of the payments.

(5) No application for payments shall be considered by the commission that is not prepared and signed according to the rules and regulations of the commission or which is received after the date specified by the commission for receiving applications.

(c) Payments made to the various conservation districts of this state shall be used only in furtherance of the purposes of this chapter and shall be in such amounts and with such restrictions as prescribed by the

rules and regulations of the commission.

(d) The Division of Legislative Audit shall annually audit the books and accounts of each of the soil conservation districts receiving payments under the provisions of this section. All payments made to such districts shall be used for the purposes provided for in this section. Any soil conservation district which shall violate the provisions of this section shall not thereafter for a period of three (3) years be eligible for payments under the provisions of this section. Any member of the board of directors of any soil conservation district or any other person or persons who shall violate any of the provisions of this section shall be guilty of a misdemeanor.

**History.** Acts 1957, No. 196, §§ 1-4; 1963, No. 14, § 17; 1969, No. 181, § 5; 1971, No. 160, § 1; 1973, No. 140, § 3; A.S.A. 1947, §§ 9-914 — 9-917.

Publisher's Notes. Acts 1963, No. 14, § 18, provided: "The following laws and parts of laws enacted by the General Assembly of the State of Arkansas are hereby repealed, effective April 1, 1963: the first four unnumbered sentences of Subsection (A), and all of Subsection (C), of Section 4 of Act 197, approved March 3,

1937; Sections 1 to 8, inclusive, of Act 212, approved March 8, 1937; Section 1 of Act 146, approved March 24, 1941; Sections 4 and 5 of Act 407, approved March 27, 1941; Section 3 of Act 351, approved March 24, 1943; Section 1 of Act 354, approved March 24, 1943; Act 255, approved March 15, 1955; all of Section 3, save only the last sentence thereof, and Paragraphs (a), (b) and (c) of Section 4, of Act 81, approved February 25, 1957."

### SUBCHAPTER 2 — DISTRICT ORGANIZATION

SECTION.

14-125-201. Petition for district organization.

14-125-202. Hearings — Determination of necessity and boundaries for district.

14-125-203. Administrative practicability and feasibility generally — Holding referendum.

14-125-204. Expenses and conduct of hearings and referenda.

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nal determination by commission.

14-125-206. Appointment of directors — Proceedings for organization.

14-125-207. Subsequent petitions for district organization.

14-125-208. Petitions to include additional territory.

14-125-209. Certificate as evidence.

Effective Dates. Acts 1945, No. 225, § 2: approved Mar. 20, 1945. Emergency clause provided: "It is hereby found and declared to be a fact that in the interest of the public welfare, there is an urgent need

to permit the soil conservation districts to vary their boundary lines, and that to do so will make it more convenient to the farmers throughout soil conservation districts to carry on their production program needed in the war effort under the provisions of this act; therefore, this act being necessary for the preservation of the public peace, health and safety of the

people of the State of Arkansas, an emergency is declared to exist and this act shall be in force and effect from and after its passage."

# 14-125-201. Petition for district organization.

(a) Any twenty-five (25) owners of land lying within the limits of the territory proposed to be organized into a district may file a petition with the Arkansas Soil and Water Conservation Commission asking that a soil conservation district be organized to function in the territory described in the petition.

(b) The petition shall set forth:

(1) The proposed name of the district;

(2) That there is need, in the interest of the public health, safety, and welfare for a soil conservation district to function in the territory

described in the petition:

(3) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions but shall be deemed sufficient if generally accurate;

(4) A request that:

(A) The Arkansas Soil and Water Conservation Commission duly define the boundaries for the district;

(B) A referendum be held within the territory so defined on the question of the creation of a soil conservation district in the territory; and

(C) The commission determine that such a district be created.

(c) Where more than one (1) petition is filed covering parts of the same territory, the Arkansas Soil and Water Conservation Commission may consolidate all or any such petitions.

**History.** Acts 1937, No. 197, § 5; Pope's Dig., § 11837; A.S.A. 1947, § 9-905.

# 14-125-202. Hearings — Determination of necessity and boundaries for district.

(a) Within thirty (30) days after the petition has been filed with the Arkansas Soil and Water Conservation Commission, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of the district, upon the question of the appropriate boundaries to be assigned to the district, upon the propriety of the petition and other proceedings taken under this chapter, and upon all questions relevant to such inquiries.

(b) All owners of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to

the described territory, and all other interested parties, shall have the right to attend the hearings and to be heard.

(c) If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearings shall be given throughout the entire area considered for inclusion in the district, and the further hearing held.

(d) After the hearing, if the commission shall determine, upon the facts presented at the hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the territory considered at the hearing, it shall make and record the determination, and shall define, by metes and bounds, or by sections or part-sections, or by legal subdivisions, the boundaries of the district.

(e) In making the determination and in defining the boundaries, the commission shall give due weight and consideration to:

(1) The topography of the area considered and of the state;

(2) The composition of soils therein;

(3) The distribution of erosion;

(4) The prevailing land-use practices;

(5) The desirability and necessity of including within the boundaries the particular lands under consideration and the benefits the lands may receive from being included within the boundaries;

(6) The relation of the proposed area to existing watersheds and

agricultural regions; and

- (7) Other soil conservation districts already organized or proposed for organization under the provisions of this chapter and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determination set forth in §§ 14-125-102 14-125-104.
- (f) The territory to be included within the boundaries need not be contiguous.
- (g) If the commission shall determine after the hearing, after due consideration of the relevant facts, that there is no need for a soil conservation district to function in the territory considered at the hearing, it shall make and record the determination and shall deny the petition.
- (h) After six (6) months shall have expired from the date of the denial of a petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearings held and determinations made thereon.

**History.** Acts 1937, No. 197, § 5; Pope's Dig., § 11837; A.S.A. 1947, § 9-905.

# 14-125-203. Administrative practicability and feasibility generally — Holding referendum.

(a) After the commission has made and recorded a determination that there is need, in the interest of the public health, safety, and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within the boundaries with the powers conferred upon soil conservation districts in this chapter is administratively practicable and feasible.

(b) To assist the commission in the determination of administrative practicability and feasibility, it shall be the duty of the commission, within a reasonable time after entry of the findings that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum within the proposed district upon the proposition of the creation of the district and to cause

due notice of the referendum to be given.

(c) The question shall be submitted by ballots upon which the words "FOR creation of a soil conservation district of the lands below described and lying in the county(ies) of ......, and ......." and "AGAINST creation of a soil conservation district of the lands below described and lying in the county(ies) of ...... and ......." shall be printed, with a direction to cross out or scratch off one (1) or the other of the propositions, leaving unmarked the proposition for which the voter wishes to vote.

(d) The ballot shall set forth the boundaries of the proposed district

as determined by the commission.

(e) All owners of lands lying within the boundaries of the territory, as determined by the Arkansas Soil and Water Conservation Commission, shall be eligible to vote in the referendum.

(f) Only such landowners shall be eligible to vote.

**History.** Acts 1937, No. 197, § 5; Pope's Dig., § 11837; A.S.A. 1947, § 9-905.

# 14-125-204. Expenses and conduct of hearings and referenda.

(a) The commission shall pay all expenses for the issuance of notices and the conduct of the hearings and referenda and shall supervise the

conduct of the hearings and referenda.

(b) It shall issue appropriate regulations governing the conduct of the hearings and referenda, and providing for the registration prior to the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in the referendum.

(c) No informalities in the conduct of the referendum or in any matters relating thereto shall invalidate the referendum or its result if notice thereof shall have been given substantially as herein provided and the referendum shall have been fairly conducted.

**History.** Acts 1937, No. 197, § 5; § 1; 1965, No. 424, § 3; A.S.A. 1947, § 9-Pope's Dig., § 11837; Acts 1945, No. 225, 905.

# 14-125-205. Results of referendum — Final determination by commission.

(a) The commission shall publish the result of the referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible.

(b) If the commission shall determine that the operation of the district is not administratively practicable and feasible, it shall record

the determination and deny the petition.

(c) If the commission shall determine that the operation of the district is administratively practicable and feasible, it shall record the determination and shall proceed with the organization of the district in the manner hereinafter provided.

(d) In making the determination the commission shall give due regard and weight to the attitudes of the owners of lands lying within the defined boundaries, the number of landowners eligible to vote in the referendum who shall have voted, the proportion of the votes cast in the referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the landowners of the proposed district, the probable expense of carrying on erosion-control operations within the district, and other economic and social factors as may be relevant to the determination, having due regard to the legislative determinations set forth in §§ 14-125-102 — 14-125-104.

(e) However, the commission shall not have authority to determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless at least two-thirds (%) of the votes cast in the referendum upon the proposition of the creation of the district shall have been cast in favor of the creation

of the district.

**History.** Acts 1937, No. 197, § 5; Pope's Dig., § 11837; A.S.A. 1947, § 9-905.

# 14-125-206. Appointment of directors — Proceedings for organization.

(a) If the commission shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two (2) directors to act, with the three (3) directors elected as provided hereinafter, as the governing body of the district.

(b) The district shall be a governmental subdivision of this state and a public body, corporate and politic, upon the taking of the following

proceedings:

(1) The two (2) appointed directors shall present to the Secretary of State an application signed by them, which shall set forth, and the application need contain no detail other than the mere recitals:

(A)(i) That a petition for the creation of the district was filed with the Arkansas Soil and Water Conservation Commission pursuant to the provisions of this chapter and that the proceedings specified in this chapter were taken pursuant to the petition;

(ii) That the application is being filed in order to complete the organization of the district as a governmental subdivision and a

public body, corporate and politic, under this chapter; and

(iii) That the commission has appointed them as directors;

- (B) The name and official residence of each of the directors, together with a certified copy of the appointments evidencing their right to office;
  - (C) The term of office of each of the directors;

(D) The name which is proposed for the district; and

- (E) The location of the principal office of the directors of the district.
- (2) The application shall be subscribed and sworn to by each of the directors before an officer authorized by the laws of this state to take and certify oaths, who shall certify upon the application that he personally knows the directors and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence.

(3) The application shall be accompanied by a statement by the Arkansas Soil and Water Conservation Commission, which shall certify, and such statement need contain no detail other than the mere recitals,

that:

(A) A petition was filed, notice issued, and hearing held as afore-

(B) The commission did duly determine that there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the proposed territory and did define the

boundaries thereof;

(C) Notice was given and a referendum held on the question of the creation of the district, that the result of the referendum showed two-thirds (%) of the votes cast in the referendum to be in favor of the creation of the district, and that thereafter the commission did duly determine that the operation of the proposed district is administratively practicable and feasible.

(4) The statement shall set forth the boundaries of the district as

they have been defined by the commission.

(5) The Secretary of State shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other soil conservation district of this state or so nearly similar as to lead to confusion or uncertainty, shall receive and file them and shall record them in an appropriate book of record in his office. If the Secretary of State shall find that the name proposed for

the district is identical with that of any other soil conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, he shall certify that fact to the Arkansas Soil and Water Conservation Commission, which shall thereupon submit to the Secretary of State a new name for the district, which shall not be subject to the defects. Upon receipt of the new name, free of such defects, the Secretary of State shall record the application and statement, with the name so modified, in an appropriate book of record in his office.

(6) When the application and statement have been made, filed, and recorded, as provided in this section, the district shall constitute a governmental subdivision of this state and a public body, corporate and

politic.

(7) The Secretary of State shall make and issue to the directors a certificate, under the seal of the state, of the due organization of the district and shall record the certificate with the application and statement. The boundaries of the district shall include the territory as determined by the Arkansas Soil and Water Conservation Commission as set out in §§ 14-125-201 and 14-125-202, but in no event shall they include any area included within the boundaries of another soil conservation district organized under the provisions of this chapter.

**History.** Acts 1937, No. 197, § 5; § 1; 1965, No. 424, § 3; A.S.A. 1947, § 9-Pope's Dig., § 11837; Acts 1945, No. 225, 905.

# 14-125-207. Subsequent petitions for district organization.

After six (6) months shall have expired from the date of entry of a determination by the Arkansas Soil and Water Conservation Commission that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to the determination, subsequent petitions may be filed as set out in § 14-125-201 and action taken thereon in accordance with the provisions of this chapter.

**History.** Acts 1937, No. 197, § 5; Pope's Dig., § 11837; A.S.A. 1947, § 9-905.

# 14-125-208. Petitions to include additional territory.

- (a) Petitions for including additional territory within an existing district may be filed with the Arkansas Soil and Water Conservation Commission, and the proceedings herein provided for in the case of petitions to organize a district shall be observed in the case of petitions for inclusion.
- (b) The commission shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this chapter for petitions to organize a district.

(c) Where the total number of landowners in the area proposed for inclusion shall be less than twenty-five (25), the petition may be filed

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when signed by two-thirds (%) of the owners of such areas, and in such case no referendum need be held.

(d) In referenda upon petitions for such inclusion, all owners of land lying within the proposed additional area shall be eligible to vote.

**History.** Acts 1937, No. 197, § 5; Pope's Dig., § 11837; A.S.A. 1947, § 9-905.

### 14-125-209. Certificate as evidence.

- (a) In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract, proceeding, or action of the district, the district shall be deemed to have been established in accordance with the provisions of this chapter upon proof of the issuance of a certificate by the Secretary of State pursuant to § 14-125-206.
- (b) A copy of the certificate duly certified by the Secretary of State shall be made admissible in evidence in any such suit, action, or proceeding and shall be proof of the filing and contents thereof.

**History.** Acts 1937, No. 197, § 5; Pope's Dig., § 11837; A.S.A. 1947, § 9-905.

# Subchapter 3 — Board of Directors

14-125-301.	Directors generally.
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14-125-310. Surety bonds, records of proceedings, and audits.

14-125-311. Record and report of financial transactions.

14-125-312. Health insurance for conservation district employees.

Effective Dates. Acts 1947, No. 338, § 2: effective on passage.

Acts 1973, No. 140, § 4: Feb. 16, 1973. Emergency clause provided: "It is found and is hereby declared by the General Assembly of the State of Arkansas that conservation district elections are scheduled to be held in many districts throughout the State of Arkansas in March, 1973, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1977, No. 295, § 2: July 1, 1977. Emergency clause provided: "It is hereby found and determined by the Seventy-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1977 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1977 could work irreparable harm upon

the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1977."

Acts 1981, No. 755, § 21: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1981 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1981 could work irreparable harm upon the proper administration and providing

of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981."

Acts 1985, No. 676, § 3: Mar. 27, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the election of conservation district directors should be rescheduled; that in certain counties, the elections should occur in March 1985; that unless this emergency clause is adopted, this Act will not go into effect until months after March 1985. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

# 14-125-301. Directors generally.

(a) The governing body of the district shall consist of five (5) directors, elected or appointed pursuant to this chapter.

(1) The three (3) elected directors shall be qualified electors residing

in the district.

(2) The two (2) directors appointed by the commission shall be persons who are owners of land within the district and who are by training and experience qualified to perform the services which will be required of them in the performance of their duties under this chapter.

(b) The directors shall designate a chairman and may, from time to

time, change the designation.

(c) The term of office of each director shall begin on the first day of the month next following his date of election or appointment, as the case may be, and shall be for three (3) years. The directors who are first appointed shall be designated to serve for terms of one (1) year and two (2) years, respectively, from the date of their appointment.

(d) Before entering on the duties of office, each director shall take and subscribe to the oath of office required by the Arkansas Constitu-

tion, Article 19, § 20.

(e) A director shall hold office until his successor has been elected or

appointed and has qualified.

(f) All vacancies shall be filled by appointment by the commission. Vacancies in the office of an elected director shall be filled for the unexpired term. Vacancies in the office of an appointed director shall be filled for a new full term.

(g) In making appointments, the commission shall consider any recommendation which may be made by the remaining members of the local board.

(h) A majority of the directors shall constitute a quorum, and the concurrence of the majority in any matter within their duties shall be

required for its determination.

- (i) As reimbursement for his attendance at any scheduled meeting of the district, a director may receive a sum not to exceed fifteen dollars (\$15.00) plus mileage allowance at the same rate authorized by law or state travel regulations for state employees, per mile traveled from his home to the place of meeting and return. He may also be reimbursed for his actual expenses, including traveling expenses, necessarily incurred in the discharge of his other duties.
- (j) Any director may be removed by the commission upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.
- (k) A director shall not qualify for reappointment or reelection unless he shall have attended at least sixty-five percent (65%) of the scheduled conservation district board meetings and at least three (3) state or area meetings during each three-year term of office; provided, however, absences which are excused by the Arkansas Soil and Water Conservation Commission shall not disqualify a director for reappointment or reelection. Furthermore, the Arkansas Soil and Water Conservation Commission shall not require a director to personally appear before the commission in order to receive a waiver.
- (l) However, upon a showing of good cause, this condition may be waived by resolution duly adopted by the commission.

**History.** Acts 1937, No. 197, § 7; Pope's Dig., § 11839; Acts 1969, No. 181, § 4; 1977, No. 295, § 1; 1983, No. 687, § 1; A.S.A. 1947, § 9-907; Acts 1993, No. 1005, § 1.

Amendments. The 1993 amendment, in (k), added the proviso at the end of the first sentence and deleted the second sentence.

# 14-125-302. Election of directors.

(a) Within thirty (30) days after the date of issuance by the Secretary of State of a certificate of organization of a conservation district, nominating petitions may be filed with the commission to nominate candidates for directors of the district.

(b)(1) The commission shall have authority to extend the time within

which nominating petitions may be filed.

(2) No such nominating petition shall be accepted by the commission unless it shall be subscribed by twenty-five (25) or more qualified electors within the boundaries of the district.

(3) Qualified electors may sign more than one (1) such nominating

petition to nominate more than one (1) candidate for director.

(4) The commission shall give due notice of an election to be held for the election of three (3) directors for the district.

- (5) The names of all nominees on behalf of whom the nominating petitions have been filed within the time herein designated shall be printed, arranged in alphabetical order of the surnames upon ballots, with a direction to vote for three (3) by placing an "X" in the square beside the name of each person for whom the voter wishes to vote.
- (6) All qualified electors within the district shall be eligible to vote in the election.
- (7) The three (3) candidates who shall receive the largest number, respectively, of the votes cast in the election shall be the elected directors for the district.
  - (8) The commission shall:
    - (A) Pay all the expenses of the election;
    - (B) Supervise the conduct thereof;
  - (C) Prescribe regulations governing the conduct of the election and the determination of the eligibility of voters therein; and
  - (D) Publish the results and report results of the election to the Secretary of State.
- (c)(1) Subsequent elections shall be conducted in the same manner. However, the district shall pay all the expenses of the elections, and the nominating petitions for candidates shall be filed with the commission during the first two (2) weeks of February of the year of election.
  - (2) The elections shall be scheduled as follows:
  - (A) On the first Tuesday in March, 2000, and on the first Tuesday in March every third year thereafter, in those districts which have the greatest amount of district territory in the following counties:

Boone Little River Carroll Logan Clark Lonoke **Poinsett** Clav Cleburne Polk Cleveland Saline Columbia Scott Conway Searcy Crawford St. Francis White Cross Fulton Woodruff Yell Greene Jefferson

(B) On the first Tuesday in March 1998, and on the first Tuesday in March every third year thereafter, in those districts which have the greatest amount of district territory in the following counties:

Baxter Phillips
Calhoun Pike
Craighead Pope
Dallas Prairie
Faulkner Pulaski
Garland Randolph
Hempstead Sebastian

Monroe Sevier
Nevada Sharp
Newton Stone
Ouachita Union
Perry Van Buren
Washington

(C) On the first Tuesday in March, 1999, and on the first Tuesday in March every third year thereafter in those districts which have the greatest amount of district territory in the following counties:

Arkansas Hot Spring
Ashley Howard
Benton Independence
Bradley Izard

Izard Chicot Jackson Crittenden Johnson Desha Lafavette Drew Lawrence Franklin Lee Grant. Lincoln Madison Mississippi Marion Montgomery

Miller

**History.** Acts 1937, No. 197, § 6; Pope's Dig., § 11838; Acts 1969, No. 181, § 3; 1973, No. 140, § 2; 1985, No. 676, § 1; A.S.A. 1947, § 9-906; Acts 1997, No. 505, § 1.

Amendments. The 1997 amendment rewrote (c)(2).

# 14-125-303. Powers of districts and directors.

(a) A soil and water conservation district organized under the provisions of this chapter shall constitute a governmental subdivision of this state, and a public body, corporate and politic, exercising public powers. The district and the directors thereof shall have the following powers, in addition to others granted in other sections of this chapter:

(1) To carry out preventive and control measures and works of improvement for flood prevention or the conservation, development, and utilization of soil and water resources and the disposal of water within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in § 14-125-104, on lands owned or controlled by this state or any of its agencies, with the consent and cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner of the lands or the necessary rights or interests in the lands. When needed to carry out the purposes of the chapter within the district, works of improvement may also be carried out outside the boundaries of the district.

- (2) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any owner of lands within the district, in the carrying on of erosion-control and prevention operations and works of improvement for flood prevention of the conservation, development, and utilization of soil and water resources and the disposal of water within the district, subject to such conditions as the directors may deem necessary to advance the purposes of this chapter;
- (3) To obtain options upon and to acquire, by purchase, exchange, gift, grant, bequest, devise, or otherwise, any real or personal property, or rights or interests therein, within or without the district which may be needed for works of improvement for the prevention of erosion, floodwater, and sediment damages, or the conservation, development, and utilization of soil and water resources and the disposal of water; to acquire by condemnation any real property, or rights or interests therein, within or without the district, in the same manner provided by Acts 1945, No. 177 [repealed] except as otherwise provided in this chapter:

(A) To maintain, administer, and improve any properties acquired;

(B) To receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; and

(C) To sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this

chapter;

(4) To make available, on such terms as it shall prescribe to landowners within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment, as will assist such landowners to carry on operations upon their lands for the prevention and control of soil erosion and for flood prevention or the conservation, development, and utilization of soil and water resources and the disposal of water;

(5) To construct, improve, operate, and maintain such works of improvement as may be necessary or convenient for the performance of

any of the operations authorized in this chapter;

- (6) To develop comprehensive plans for the control and prevention of soil erosion and for flood prevention or the conservation, development, and utilization of soil and water resources and the disposal of water within the district. These plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land, and to bring such plans and information to the attention of owners of lands within the district;
- (7) To accept donations, gifts, and contributions in money, services, materials, or otherwise from the United States or any of its agencies,

from this state or any of its agencies, or from any other source and to use or expend such moneys, services, materials, or other contributions in carrying on its operations, except that all forest tree seedlings shall be obtained, insofar as available, from the State Forestry Commission in cooperation with the United States Department of Agriculture; to accept appropriations from the state upon such terms and conditions as may be imposed by law to be used in the furtherance of the purposes of the district.

(8)(A) To sue and be sued in the name of the district;

(B) To have a seal which seal shall be judicially noticed;

(C) To have perpetual succession unless terminated as hereinafter provided;

(D) To make and execute contracts and other instruments, neces-

sary or convenient to the exercise of its powers;

(E) To borrow money and to issue notes, bonds, and other evidences of indebtedness in connection therewith and to pledge, mortgage, and assign the income of the district, including special benefit taxes, and its personal property as security therefor;

(F) To levy taxes based on special benefits;

(G) To make, and from time to time amend and repeal rules and regulations not inconsistent with this chapter, to carry into effect its

purposes and powers;

(9) As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, directors to require contributions in money, services, materials, or otherwise to any operation conferring such benefits, and require landowners to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages thereon.

(b) No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to the acquisition, operation, or disposition of property by a district organized hereunder unless the General Assembly shall specifically so state.

**History.** Acts 1937, No. 197, § 8; § 1; 1959, No. 36, § 1; 1959, No. 137, § 1; Pope's Dig., § 11840; Acts 1947, No. 338, 1965, No. 424, § 4; A.S.A. 1947, § 9-909.

### 14-125-304. Delegation of directors' powers and duties.

The directors may delegate to their chairman, to one (1) or more directors, or to one (1) or more agents or employees such powers and duties as they may deem proper.

**History.** Acts 1937, No. 197, § 7; § 4; 1977, No. 295, § 1; A.S.A. 1947, § 9-Pope's Dig., § 11839; Acts 1969, No. 181, 907.

#### 14-125-305. Employees — Legal services.

(a) The directors may employ technical experts, whose qualifications shall be approved by the commission, and such other employees as they may require, and shall determine their qualifications, duties, and compensations.

(b) The directors may call upon the commission's attorney or the

Attorney General for such legal services as they may require.

History. Acts 1937, No. 197, § 7; Pope's Cross References. Membership in Dig., § 11839; Acts 1969, No. 181, § 4; state public employees retirement system, 1977, No. 295, § 1; A.S.A. 1947, § 9-907. § 24-4-729.

### 14-125-306. Furnishing information to commission.

The directors shall furnish to the commission, upon request, copies of such rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ and such other information concerning their activities as it may require in the performance of its duties under this chapter.

**History.** Acts 1937, No. 197, § 7; § 4; 1977, No. 295, § 1; A.S.A. 1947, § 9-Pope's Dig., § 11839; Acts 1969, No. 181, 907.

## 14-125-307. Assistance from counties and municipalities.

(a) The directors may invite the legislative body of any municipality or county located within or near the territory comprised within the district to designate a representative to advise and consult with the directors of the district on all questions of program and policy which may affect the property, water supply, or other interests of the municipality or county.

(b) Since the protection, preservation, conservation, and proper utilization of renewable natural resources are necessary in order to protect the public health and welfare, the county judge of any county served by a conservation district may assist the directors of the district in carrying out the purposes of this chapter. To that end he may use the equipment and employees of the county to do the conservation work as may be requested by the directors and may make a reasonable charge therefor.

(c) In the event the county court finds that the benefits accruing to the county by reason of the program of a conservation district justify the action, it may make donations to the district of money, services, or the use of equipment.

(d) The directors of those districts desiring county assistance shall make application therefor to the county judge and in such form as he

may prescribe.

(e) The quorum courts of the respective counties of the state are authorized and empowered to appropriate annually an amount as may be deemed necessary for such purposes.

**History.** Acts 1937, No. 197, § 7; Pope's Dig., § 11839; Acts 1969, No. 181, § 4; A.S.A. 1947, § 9-907.

#### 14-125-308. Cooperation between districts.

The directors of any two (2) or more districts organized under the provisions of this chapter may cooperate with one another in the exercise of any or all powers conferred in this chapter.

**History.** Acts 1937, No. 197, § 11; Pope's Dig., § 11843; A.S.A. 1947, § 9-912.

#### 14-125-309. Construction.

(a) The board of directors shall have control of the construction of the works provided for in the improvement plan.

(b) It may advertise in local or state papers or papers published in other states for proposals for doing any work by contract. No work exceeding one thousand dollars (\$1,000) shall be let without public

advertisement. The board may accept or reject any proposals.

(c) If the improvement plan is undertaken in cooperation with the United States, the board may enter into an agreement providing for the construction of the works of improvement and awarding of contracts therefor, to be by, and under the control and supervision of, the United States or any agency or instrumentality thereof. In that event the advertisement, award, and carrying out of the contracts shall be in accordance with the provisions of law applicable to such federal agency.

(d) All contractors shall be required to give bond for the faithful performance of such contracts as may be awarded them for construction of the works provided for in the improvement plan, with good and sufficient sureties, in an amount to be fixed by the board. The board shall not remit or excuse the penalty or forfeiture of the bond or the

breaches thereof.

(e) The board may:

(1) Appoint all necessary agents for carrying on the work and fix their pay;

(2) Buy all necessary materials and implements and sell any material or implements as may be on hand and which may not be necessary for the completion of the improvements; and

(3) Make all such contracts in the prosecution of the work as may

best subserve the public interest.

(f) It shall be the duty of the board to have the amount of work done by any contractor estimated, from time to time as may be desirable, by the engineer selected by the board. The board shall draw its warrants in favor of the contractor for not more than ninety percent (90%) of the amount of work so reported, reserving the remainder until it has been ascertained that the work has been completed according to contract and is free from liens.

**History.** Acts 1937, No. 197, §§ 34, 35, as added by Acts 1965, No. 424, § 5; 1969, No. 152, § 2; A.S.A. 1947, §§ 9-937, 9-938.

## 14-125-310. Surety bonds, records of proceedings, and audits.

The directors shall provide for:

(1) The execution of surety bonds for all employees and officers who shall be entrusted with funds or property;

(2) The keeping of a full and accurate record of all proceedings and of

all resolutions, regulations, and orders issued or adopted; and
(3) An annual audit of the accounts of receipts and disbursements.

History. Acts 1937, No. 197, § 7; § 4; 1977, No. 295, § 1; 1983, No. 687,

### 14-125-311. Record and report of financial transactions.

Pope's Dig., § 11839; Acts 1969, No. 181, § 1; A.S.A. 1947, § 9-907.

(a) The board of directors shall keep a complete record of all financial transactions relating to the carrying out of the approved plan for works of improvement in a project area.

(b)(1) On or before March 1 of each year, the board shall file with the clerk of the court a sworn statement covering the preceding year ending December 31 of the financial condition of the district with respect to the

approved plan in a project area.

(2) In project areas with revenues, from whatever source derived, in excess of five thousand dollars (\$5,000) per year, the pertinent books, records, and last annual report of the district with respect to the approved plan shall be examined at least once a year by a certified public accountant.

(3) The accountant shall file a report of the examination with the clerk of the court within thirty (30) days after completing such exami-

nation.

(4) The accountant shall recommend the form and method for keeping books and records and for making the reports of the district with respect to the approved plan.

(5) The expense of the examination shall be paid as a part of the

expenses of carrying out the approved plan.

**History.** Acts 1937, No. 197, § 31, as added by Acts 1965, No. 424, § 5; A.S.A. 1947, § 9-934; Acts 1987, No. 472, § 4.

## 14-125-312. Health insurance for conservation district employees.

Conservation district employees are deemed to be state employees for the purpose of participating in group health insurance programs.

**History.** Acts 1981, No. 755, § 15; A.S.A. 1947, § 9-907.1; Acts 1991, No. 165, § 1.

#### Subchapter 4 — Division or Combination of Districts

SECTION.	
14-125-401.	In general.
14-125-402.	Petition requesting division or combination.
14-125-403.	Conduct of referendum.
14-125-404.	Results of referendum -
	Commission determination.
14-125-405.	Directors — Certification of commission determina-
14-125-406.	tion. Application for completion.

SECTION.

14-125-407. Processing applications —

Certification of resulting

districts.

14-125-408. Effect of prior district regulations, contracts, etc. —
Commission responsibility.

14-125-409. District powers and restrictions.

14-125-410. Change of district name.

Effective Dates. Acts 1945, No. 225, § 2: approved Mar. 20, 1945. Emergency clause provided: "It is hereby found and declared to be a fact that in the interest of the public welfare, there is an urgent need to permit the soil conservation districts to vary their boundary lines, and that to do so will make it more convenient to the farmers throughout soil conservation dis-

tricts to carry on their production program needed in the war effort under the provisions of this act; therefore, this act being necessary for the preservation of the public peace, health and safety of the people of the State of Arkansas, an emergency is declared to exist and this act shall be in force and effect from and after its passage."

### 14-125-401. In general.

Any district or districts organized under the provisions of this chapter may be divided, or combined with any other district or districts, or divided and combined with any other district or districts in the manner set out in §§ 14-125-402 — 14-125-409.

**History.** Acts 1937, No. 197, § 5; Pope's Dig., § 11837; Acts 1945, No. 225, § 1; A.S.A. 1947, § 9-905.

## 14-125-402. Petition requesting division or combination.

(a) At least twenty-five (25) landowners of each district affected by the proposed division or combination shall sign and file with the Arkansas Soil and Water Conservation Commission a petition requesting that the district or districts, as the case may be, and the operations thereof, be divided or combined, or divided and combined, in the manner requested.

(b) The commission shall prescribe the form for the petitions, which shall be as nearly as may be in the form described in this chapter for

petitions to organize a district.

(c) The commission may conduct the public meetings and public hearings upon the petition as may be necessary to assist it in the consideration thereof.

(d) The commission may define in more detail the boundaries outlined in the petitions for the districts proposed to result from the division or combination.

**History.** Acts 1937, No. 197, § 5; Pope's Dig., § 11837; Acts 1945, No. 225, § 1; A.S.A. 1947, § 9-905.

#### 14-125-403. Conduct of referendum.

(a) Within sixty (60) days after a petition has been filed with the Arkansas Soil and Water Conservation Commission pursuant to § 14-125-402, the commission shall give due notice of the holding of a referendum, shall supervise and conduct the referendum, and shall issue appropriate regulations governing the conduct thereof.

(b) Each owner of land lying within the district or districts to be affected shall be entitled to vote, and only such landowners shall be

entitled to vote.

(c) The Arkansas Soil and Water Conservation Commission shall make provisions on the referendum for each landowner to vote:

(1) On whether or not he approves of the proposed division, if any, of

the district in which his land is located; and

(2) On whether or not he approves of the proposed new district in which his land will be located under the proposed combination, if any.

(d) No informalities in the conduct of the referendum or in any matters relating thereto shall invalidate the referendum or the result thereof if notice shall have been given substantially as provided in this section and the referendum shall have been fairly conducted.

**History.** Acts 1937, No. 197, § 5; Pope's Dig., § 11837; Acts 1945, No. 225, § 1; A.S.A. 1947, § 9-905.

## 14-125-404. Results of referendum — Commission determination.

- (a) The commission shall publish the results of the referendum and shall thereafter consider and determine whether the division or combination requested in the petition is administratively practicable and feasible.
- (b) If the commission shall determine that the division or combination of the district or districts is not administratively practicable and feasible, it shall record the determinations and deny the petition. If the commission shall determine that the division or combination is administratively feasible and practicable, it shall record the determinations and proceed with the division or combination of the district or districts in the manner hereafter provided.

(c) In making the determinations, the commission shall give due

regard and weight to:

(1) The attitudes of the owners of lands lying within the defined boundaries of the districts to be affected;

- (2) The number of landowners eligible to vote in the referendum who shall have voted;
- (3) The proportion of the votes cast in the referendum in favor of the division or combination of the district or districts to the total number of votes cast;
- (4) The approximate wealth and income of the land owners of the proposed new district or districts:

(5) The probable expense of carrying on erosion-control operations

within the district or districts; and

- (6) Such other economic and social factors as may be relevant to the combination, having due regard to the legislative determinations set forth in §§ 14-125-102 14-125-104.
- (d) However, no district or districts may be divided or combined if a majority of land owners voting vote against either the particular division or combination which is submitted to their vote as hereinabove provided.

**History.** Acts 1937, No. 197, § 5; Pope's Dig., § 11837; Acts 1945, No. 225, § 1; A.S.A. 1947, § 9-905.

## 14-125-405. Directors — Certification of commission determination.

- (a) If the commission shall determine that the proposed division or combination is practicable and feasible in its entirety, it shall appoint for each district to result from the proposed division or combination two (2) directors to act with three (3) directors to be elected in accordance with, and subject to, the terms and conditions set forth in §§ 14-125-301 and 14-125-302, except that the nominating petitions shall be filed within thirty (30) days of the determination of the commission and notice thereof to the eligible voters, as the governing body of each such district.
- (b) Any existing director shall be eligible to be appointed or elected as a new director.
- (c) The commission shall then certify to the new directors, and to the directors of each existing district which is to be divided or combined, hereinafter sometimes called "old directors", the determination of the commission as to the administrative practicability and feasibility of the division or combination, the boundaries of the proposed district, the names, addresses, and positions of the directors appointed or elected for each new district, and such other data as it deems appropriate.
- (d) Thereupon, the old directors of each district to be divided, if any, shall decide the proportion and manner of division of its property, assets, and rights, exclusive, however, of any executory contracts, among the new districts into which the old district is to be divided, taking into consideration the nature and source of the property, assets, and rights, the comparative sizes of the new divisions, the number of landowners of each division, and general considerations of fairness in making the allocation.

(e) The directors shall notify the commission and the new directors, who are to receive any of the property, rights, and assets, of their decision; and the property, assets, and rights shall then be divided and transferred accordingly.

(f) If no division of a district is to be made, the directors shall simply transfer the assets, property, and rights of the district to the new directors of the combined district of which it will comprise a part.

(g) If the directors of a district to be divided are unable to agree on the division of the property, assets, and rights to be made, within sixty (60) days after the certification of determination from the commission, they shall notify the commission. After a hearing of the directors and any other persons within the district who may be, in the commission's judgment, reasonably entitled to be heard, the commission shall decide and determine finally the proportions and manner of the division and shall certify its decision to the directors, who shall proceed forthwith to divide the property, assets, and rights accordingly.

**History.** Acts 1937, No. 197, § 5; Pope's Dig., § 11837; Acts 1945, No. 225, § 1; A.S.A. 1947, § 9-905; Acts 1993, No. 403, § 6.

Amendments. The 1993 amendment substituted "commission" for "committee" after "determination of the" in (a).

### 14-125-406. Application for completion.

- (a) Upon receiving the property, assets, and rights to which they shall be entitled under the division or combination decided upon in the above manner, the directors of each resulting district shall file an application, duly verified, with the Secretary of State, for the completion of the division or combination, which application shall set forth, and such application need contain no detail other than the mere recitals that:
- (1) A petition for the division or combination of the district was filed with the Arkansas Soil and Water Conservation Commission pursuant to the provisions of this chapter and that the proceedings specified in this chapter were taken pursuant to petition;
- (2) The application is being filed in order to complete the division or combination of the old district or districts as governmental subdivisions and public bodies, corporate and politic, under this chapter;
- (3) They have been appointed and elected, respectively, as directors; and
- (4) The application shall also set forth with respect to the resulting district or districts the matters required in § 14-125-206.
  - (b) The application shall:
  - (1) Be executed and sworn to as provided in § 14-125-206; and
- (2) Be accompanied by a statement by the Arkansas Soil and Water Conservation Commission, which shall certify, and such a statement need contain no detail other than the mere recitals, that:
  - (A) A petition was filed, notice given, and a referendum held on the question of dividing or combining the named districts;

(B) The commission did duly determine that the division or combination was administratively practicable and feasible; and

(C) The division or combination of the property, assets, and rights was decided upon and carried out in accordance with the provisions

of this chapter.

(3) The statement shall set forth the boundaries of the district as they have been described in the petition or further defined by the commission.

**History.** Acts 1937, No. 197, § 5; Pope's Dig., § 11837; Acts 1945, No. 225, § 1; A.S.A. 1947, § 9-905.

## 14-125-407. Processing applications — Certification of resulting districts.

The Secretary of State shall examine the applications, shall receive and file them, and shall record them in the book for the recording of applications for the organization of districts. The old districts shall cease to exist as districts, and the resulting districts shall constitute governmental subdivisions of this state and public bodies corporate and politic. The secretary shall issue to the directors of each resulting district a certificate, under the seal of the state, of the due constitution by division or combination, as the case may be, of the district and shall record the certificate with the application and statement.

**History.** Acts 1937, No. 197, § 5; Pope's Dig., § 11837; Acts 1945, No. 225, § 1; A.S.A. 1947, § 9-905.

## 14-125-408. Effect of prior district regulations, contracts, etc. — Commission responsibility.

(a) Upon the issuance of the certificate of due constitution of each such district under the provisions of this chapter, all ordinances and regulations theretofore adopted and in force within the former districts shall be of no further force and effect.

(b) All contracts, agreements, and easements entered into, to which an old district or the old directors thereof, are parties, shall remain in

force and effect for the period provided in the contracts.

(c) The Arkansas Soil and Water Conservation Commission shall be substituted for the district or directors as a party to such contracts.

(d) The commission shall be entitled to all benefits and subject to all liabilities under the contracts and shall have the same right and liability to perform, to require performance, to sue and be sued, and to modify or terminate the contracts by mutual consent or otherwise, as the supervisors of the former district would have had.

(e) The commission may designate and direct any of the new districts to act as its agent to carry out any contract or duty, or enforce any right, or perform any other work which accrues to it under this subchapter on

account of the division or combination of an old district.

**History.** Acts 1937, No. 197, § 5; Pope's Dig., § 11837; Acts 1945, No. 225, § 1; A.S.A. 1947, § 9-905.

### 14-125-409. District powers and restrictions.

The district constituted by the division or combination, and the directors thereof, shall have the same powers and be subject to the same restrictions as districts organized under §§ 14-125-201 — 14-125-209 and the directors thereof.

**History.** Acts 1937, No. 197, § 5; Pope's Dig., § 11837; Acts 1945, No. 225, § 1; A.S.A. 1947, § 9-905.

### 14-125-410. Change of district name.

- (a) The name of any soil and water conservation district may be changed with the approval of the Arkansas Soil and Water Conservation Commission upon:
- (1) The adoption of a resolution by a majority of the board of directors of the district: and
- (2) The filing of a certified copy of the resolution with the Secretary of State.
- (b) The Secretary of State shall, if he finds that the name is not identical or so nearly similar to the name of another soil and water conservation district as to lead to confusion or uncertainty, file the resolution and issue a new certificate to the district showing the new name.

**History.** Acts 1937, No. 197, § 5; Pope's Dig., § 11837; Acts 1965, No. 424, § 3; A.S.A. 1947, § 9-905.

### Subchapter 5 — Land-Use Regulations

SECTION. SECTION. 14-125-501. Authority to formulate regu-14-125-505. Effect of referendum. lations — Meetings and 14-125-506. Copies of regulations. 14-125-507. Force and effect of regulahearings. 14-125-502. Contents of regulations tions. 14-125-508. Enforcement. Uniformity. 14-125-503. Notice of referendum — Pro-14-125-509. Amendment, supplementaposed ordinance. tion, or repeal of regula-14-125-504. Referendum. tions.

# 14-125-501. Authority to formulate regulations — Meetings and hearings.

(a) The directors of any district may formulate regulations governing the use of lands within the district in the interest of conserving soil and soil resources and preventing and controlling soil erosion. (b) The directors may conduct public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work.

**History.** Acts 1937, No. 197, § 9; Pope's Dig., § 11841; A.S.A. 1947, § 9-910.

### 14-125-502. Contents of regulations — Uniformity.

(a) The regulations to be adopted by the directors under the provisions of this subchapter may include:

(1) Provisions requiring the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check

dams, dikes, ponds, ditches, and other necessary structures;

(2) Provisions requiring observance of particular methods of cultivation including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, seeding, and planting of lands with water-conserving and erosion-preventing plants, trees, and grasses, forestation, and reforestation;

(3) Provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately

controlled if cultivation is carried on;

(4) Provisions for such other means, measures, operations, and programs as may assist conservation of soil resources and prevent or control soil erosion in the district, having due regard for the legislative

findings set forth in §§ 14-125-102 — 14-125-104.

(b) The regulations shall be uniform throughout the territory comprised within the district except that the directors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use, and other relevant factors and may provide regulations varying with the type or class of land affected but uniform as to all lands within each class or type.

**History.** Acts 1937, No. 197, § 9; Pope's Dig., § 11841; A.S.A. 1947, § 9-910.

### 14-125-503. Notice of referendum — Proposed ordinance.

(a) The directors shall not have authority to enact such land-use regulations into law until after:

(1) They shall have caused due notice to be given of their intention to conduct a referendum for submission of the regulations to the owners of lands lying within the boundaries of the district for their indication of approval or disapproval of the proposed regulations; and

(2) The directors have considered the result of the referendum.

(b) The proposed regulations shall be embodied in a proposed ordinance.

- (c) Copies of the proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of notice and the date of the referendum.
- (d) The notices of the referendum shall recite the contents of the proposed ordinance or shall state where copies of the proposed ordinance may be examined.

**History.** Acts 1937, No. 197, § 9; Pope's Dig., § 11841; A.S.A. 1947, § 9-910.

#### 14-125-504. Referendum.

- (b) The directors shall supervise the referendum, shall prescribe appropriate regulations governing the conduct thereof, and shall publish the result thereof.

(c) All owners of lands within the district shall be eligible to vote in

the referendum. Only such landowners shall be eligible to vote.

(d) No informalities in the conduct of the referendum or in any matters relating thereto shall invalidate the referendum or its result if notice thereof shall have been given substantially as provided in this section and if the referendum shall have been fairly conducted.

**History.** Acts 1937, No. 197, § 9; Pope's Dig., § 11841; A.S.A. 1947, § 9-910.

#### 14-125-505. Effect of referendum.

- (a) The directors shall not have authority to enact the proposed ordinance into law unless at least three-fourths (3/4) of the votes cast in the referendum shall have been cast for approval of the proposed ordinance.
- (b) The approval of the proposed ordinance by three-fourths (¾) of the votes cast in the referendum shall not be deemed to require the directors to enact the proposed ordinance into law.

**History.** Acts 1937, No. 197, § 9; Pope's Dig., § 11841; A.S.A. 1947, § 9-910.

#### 14-125-506. Copies of regulations.

Copies of land-use regulations adopted under the provisions of this subchapter shall be printed and made available to all occupiers of lands lying within the district.

**History.** Acts 1937, No. 197, § 9; Pope's Dig., § 11841; A.S.A. 1947, § 9-910.

### 14-125-507. Force and effect of regulations.

Land-use regulations prescribed in ordinances adopted pursuant to the provisions of this subchapter by the directors of any district shall have the force and effect of law in the district and shall be binding and obligatory upon all owners of lands within the district.

**History.** Acts 1937, No. 197, § 9; Pope's Dig., § 11841; A.S.A. 1947, § 9-910.

#### 14-125-508. Enforcement.

(a) Where the directors of any district shall find that any of the provisions of land-use regulations prescribed in an ordinance adopted in accordance with the provisions of §§ 14-125-501 — 14-125-507 and 14-125-509 are not being observed on particular lands and that the nonobservance tends to increase erosion on the lands and interferes with the prevention or control of erosion on other lands within the district, the directors may present to the chancery court for the county or counties within which the lands of the defendant may lie, a petition, duly verified, setting forth the adoption of the ordinance prescribing land-use regulations, the failure of the defendant landowner to observe the regulations and to perform particular work, operations, or avoidances as required thereby, and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, praying the court to require the defendant to perform the work, operations, or avoidances within a reasonable time, and to order that if the defendant shall fail so to perform, the directors may go on the land, perform the work or other operations, or otherwise bring the condition of the lands into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest, from the owner of the land.

(b) Upon the presentation of the petition, the court shall cause process to be issued against the defendant and shall hear the case.

(c) If it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take the evidence as it may direct and report the evidence to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

- (d) The court may dismiss the petition, or it may require the defendant to perform the work, operations, or avoidances. It may also provide that upon the failure of the defendant to initiate the performance within the time specified in the order of the court and to prosecute the performance to completion with reasonable diligence, the directors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of the lands into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of five percent (5%) per annum, from the owner of the lands.
- (e) The court shall retain jurisdiction of the case until after the work has been completed.

(f) Upon completion of the work pursuant to the order of the court, the directors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest.

(g) The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of five percent (5%) per annum until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court.

**History.** Acts 1937, No. 197, § 10; Pope's Dig., § 11842; A.S.A. 1947, § 9-911.

## 14-125-509. Amendment, supplementation, or repeal of regulations.

(a) Any owner of land within the district may at any time file a petition with the directors asking that any or all of the land-use regulations prescribed in any ordinance adopted by the directors under the provisions of this subchapter shall be amended, supplemented, or repealed.

(b) Land-use regulations prescribed in any ordinance adopted pursuant to the provisions of this subchapter shall not be amended, supplemented, or repealed except in accordance with the procedure prescribed in this section for adoption of land-use regulations.

(c) Referenda on adoption, amendment, supplementation, or repeal of land-use regulations shall not be held more often than once in six (6) months.

**History.** Acts 1937, No. 197, § 9; Pope's Dig., § 11841; A.S.A. 1947, § 9-910.

#### SUBCHAPTER 6 — IMPROVEMENT PLANS

SECTION.

14-125-601. Proposed improvement plan for project areas within districts — Petition.

14-125-602. Court approval of plan generally.

14-125-603. Court approval of plan based on preliminary survey and report prepared with

agency assistance.

14-125-604. Expense of plan preparation, adoption, and approval.

SECTION. 14-125-605. Effect of order approving im-

provement plan and establishing project area.

14-125-606. Improvement plan for an improvement project area situated in more than one district.

14-125-607. Alteration of plans.

14-125-608. Additional works of improvement.

## 14-125-601. Proposed improvement plan for project areas within districts — Petition.

(a) The board of directors of a district may from time to time, on its own motion, and upon the filing of a petition by a majority in number of the owners of the lands or the owners of a majority in value of the lands, as shown by the last assessment of real property within a proposed improvement project area within the district, adopt a proposed plan for the construction, operation, and maintenance of works of improvement for the prevention of erosion, floodwater and sediment damages, or for the conservation, development, and utilization of soil and water resources and the disposal of water within the proposed project area.

(b) The petition shall describe generally the territory intended to be included in the project area and shall state the general nature and purposes of the proposed improvements and their necessity, feasibility, and estimated cost, with such reasonable detail and definiteness as will demonstrate the utility, feasibility, and need for the improvements.

(c) The petition of the landowners shall also be accompanied by a surety bond to pay for the expenses of survey of the proposed area, in case the proposed improvement plan for the project area is not approved by the court.

**History.** Acts 1937, No. 197, § 15, as added by Acts 1965, No. 424, § 5; A.S.A. 1947, § 9-918.

## 14-125-602. Court approval of plan generally.

(a) Upon its adoption of a proposed improvement plan for an improvement project area, a copy of the plan shall be submitted to appropriate federal and state agencies for comment and the board of directors shall file the plan with the clerk of the chancery court of the county in which the district is located, with a petition that the court approve such plan for the project area therein described.

(b)(1) The court shall enter an order appointing an engineer to be selected by the board, subject to approval by the court, who shall give

bond in a sum not less than one thousand dollars (\$1,000), to be fixed by

the court, for the faithful discharge of his duties.

(2) The engineer shall forthwith proceed to make a survey and ascertain the limits of the region which would be benefited by the proposed improvements. He shall file with the clerk of the court a report showing the territory which will be benefited by the proposed improvements, giving a general idea of the character and expense thereof, and making such suggestions as to the proposed improvements and their location as he may deem advisable.

(3) The territory need not consist of contiguous parcels of land.

(c)(1) The chancery clerk shall, upon the filing of the report, give notice by publication for two (2) weeks in some newspaper published and having a general circulation in the county calling upon all persons owning property within the proposed project area, which shall be described in the notice, to appear at a hearing before the court on some day to be fixed by the court, to show cause in favor of or against the proposed improvement plan for the project area.

(2) If the court deems it to be in the best interests of the owners of land within the project area that the plan for the area shall be approved, it shall enter an order approving such plan and establishing

the project area described therein.

(3) Any owner of land within the territory of such project area may

petition the court at the hearing to exclude his property.

(4) If the court finds that the land would not be benefited by the proposed plan, the court, in its order, shall exclude the land of the petitioner or petitioners from the project area.

(5) All such improvement plans for project areas shall be appropri-

ately identified by a number or a name selected by the court.

**History.** Acts 1937, No. 197, § 16, as added by Acts 1965, No. 424, § 5; A.S.A. 1947, § 9-919.

# 14-125-603. Court approval of plan based on preliminary survey and report prepared with agency assistance.

(a) If the plan adopted by the board and filed with the clerk of the court is based on, and accompanied by, a preliminary survey and report prepared with the assistance of a federal or state agency, which sets forth the purpose of the plan, delineates the area to be benefited, describes the general nature of the works of improvement, the necessity, feasibility, and estimated cost thereof, with such reasonable detail and definiteness that the court may understand therefrom the purpose, utility, feasibility, and need therefor, and if the court deems it to be in the best interests of the owners of land within the proposed project area, the court may, without the appointment of an engineer, hold a hearing in the manner provided in § 14-125-602. If, after the hearing, the court deems it to be in the best interests of the owners of land within the proposed project area, it shall enter an order approving the plan and

establishing the project area described therein, subject to the filing of a

final work plan with the court.

(b) When completed, the final work plan shall be filed by the board of directors, together with a map showing the location of the proposed improvements and an estimate of the costs thereof, with the court as a supplement to the preliminary survey and report, and if the court deems it to be in the best interests of the landowners of the project area, it shall enter an order approving such final plan as the improvement plan for the improvement project area delineated in such final plan.

(c) If the final work plan includes in the project area lands in addition to those included in the project area in the preliminary survey and report, the court shall, before entering an order approving the plan as the improvement plan for the project area described therein, hold a hearing with respect to the additional lands in the manner provided in § 14-125-602, and make a determination as to whether the improvement plan is in the best interests of the owners of land within the modified project area described therein.

**History.** Acts 1937, No. 197, § 17, as added by Acts 1965, No. 424, § 5; A.S.A. 1947, § 9-920.

# 14-125-604. Expense of plan preparation, adoption, and approval.

All costs and expenses incurred in the preparation, adoption, and approval of an improvement plan shall be paid by the district out of its general funds, but all such costs and expenses paid by the district, upon the approval of the improvement plan, shall be repaid to the general funds of the district out of the proceeds of the first taxes or other revenues collected by the district for carrying out the improvement plan.

**History.** Acts 1937, No. 197, § 16, as added by Acts 1965, No. 424, § 5; A.S.A. 1947, § 9-919.

# 14-125-605. Effect of order approving improvement plan and establishing project area.

(a) The order of the court approving the improvement plan as provided in § 14-125-602 or the final improvement plan as provided in § 14-125-603, and establishing the improvement project area described therein, shall have all the force and effect of a judgment.

(b) Any landowner within the project area may appeal from the order within thirty (30) days after it has been made, but if no appeal is taken within that time, the order shall be deemed conclusive and binding upon all the land within the boundaries of the project area, and upon the landowners.

(c) Any owner of land within a proposed project area may within like time appeal from any order refusing to approve a proposed plan and establish a project area.

**History.** Acts 1937, No. 197, § 18, as added by Acts 1965, No. 424, § 5; A.S.A. 1947, § 9-921.

## 14-125-606. Improvement plan for an improvement project area situated in more than one district.

- (a)(1) If a proposed improvement plan for an improvement project area includes land in more than one (1) soil and water conservation district, the districts involved, after adoption of the plan by the respective boards of directors of each district, may jointly petition the chancery court of the county in which the largest portion of the land lies for approval of the plan, and all proceedings with respect to the plan shall be had in the court.
- (2) The court shall apportion all costs and expenses incurred in the preparation, adoption, and approval of the plan between the districts in the proportion to the amount of the assessment of benefits to lands in each district, and the costs and expenses that are incurred prior to the time when the assessment of benefits is made shall be apportioned between the districts in the amounts which the court shall deem to be just and equitable, but the costs and expenses paid by the districts shall, if the plan is approved, be refunded to the respective districts out of the first taxes or other revenues collected for the carrying out of such plan.

(3) All notices in connection with the improvement plan shall be published in newspapers published and having a general circulation in each district in which any lands of the project area are located.

(4) In all other respects, the proceedings in connection with the improvement plan shall be the same as is provided for an improvement

plan for a project area situated in one (1) district.

(b)(1) The improvement plan for any project area situated in more than one (1) district shall be carried out and administered by a joint board of directors appointed by the chancery court at the time the court approves the improvement plan from among the members of the boards of directors of the respective districts having land within the project area, which directors shall be eligible to serve on the joint board only during their tenure as district directors.

(2) The joint board shall consist of not more than five (5) directors, except where a larger number is required to afford adequate represen-

tation for each district having lands within the area.

(3) The representation of each district on the joint board shall be on

such basis as the court shall deem to be just and equitable.

(4) In making the appointments, the court shall take into consideration the proportion that the benefits accruing from the improvement plan to the land in each district bears to the total benefits accruing to

all lands within the project area and the proportion that the acreage of lands of each district included within the project area bears to the total acreage of lands within the project area.

(5) The court shall likewise fill by appointment any vacancy occur-

ring on the board by reason of resignation, death, or otherwise.

(c)(1) The joint board shall act on behalf of the participating districts and shall exercise all the powers and duties of the districts with respect to the carrying out of the improvement plan for the project area.

(2) The actions taken and obligations entered into in the carrying out of the improvement plan shall be the actions and obligations of each of

the participating districts acting through the joint board.

(3) All obligations issued by the joint board, including notes, bonds or other evidences of indebtedness, which are payable from taxes levied on the basis of assessment of benefits, shall be paid from the taxes levied against the land in the project area located in the several participating districts. The liability of each such district shall be in the proportion to the amount of the assessment of benefits on the lands in the district.

**History.** Acts 1937, No. 197, § 19, as added by Acts 1965, No. 424, § 5; A.S.A. 1947, § 9-922.

### 14-125-607. Alteration of plans.

- (a) The board of directors may at any time alter the plan for works of improvement, but, before constructing the work according to the changed plan, the changed plan shall be filed with the clerk of the chancery court, and notice of the filing shall be given by publication for two (2) weeks in some newspaper published and having a general circulation in each of the counties containing lands within the project area.
- (b) If the court approves the changes, it shall enter its order approving the alteration of plans. However, if the changes add lands to the established project area, the court shall, before entering the order, hold a hearing with respect to the additional lands in the manner provided in § 14-125-602 to determine whether the improvement plan is in the best interests of the owners of land within the modified project area, and the owners shall have the same right of appeal as provided in connection with the original improvement plan.

**History.** Acts 1937, No. 197, § 23, as added by Acts 1965, No. 424, § 5; A.S.A. 1947, § 9-926.

## 14-125-608. Additional works of improvement.

After the work contemplated by the original improvement plan has been completed, the board of directors may adopt and file with the clerk of the chancery court where the original plan was filed a plan for additional works of improvement for the project area, and the proceedings with respect to such additional plan, including the right of appeal, shall be the same insofar as may be practicable as those required in connection with the original plan.

**History.** Acts 1937, No. 197, § 25, as added by Acts 1965, No. 424, § 5; A.S.A. 1947, § 9-928.

#### SUBCHAPTER 7 — TAXES AND ASSESSMENTS

SECTION.		SECTION.	
	Assessments of benefits and damages.	14-125-707.	Taxes payable in full or in installments.
14-125-702.	Filing and record of assessment.	14-125-708.	Levy of tax — Lien — Appeal from tax assessment.
	Notice — Hearing of complaints — Appeal.	14-125-709.	Levy of tax for preliminary expenses.
14-125-704.	Acquiescence in damage assessment — Demand for	14-125-710.	Levy of tax for operation and maintenance.
assessme tion.	assessment — Condemna- tion.	14-125-711.	Extension of taxes on county
14-125-705.	Reassessment of benefits generally.		tax books — Collection of taxes.
14-125-706.	Reassessment after alter-		

## 14-125-701. Assessments of benefits and damages.

(a) As soon as the court has entered its order approving an improvement plan and establishing the improvement project area described therein, the court shall appoint three (3) assessors who shall be resident landowners of the project area.

(b) Each of the assessors shall take the oath of office as required by Arkansas Constitution, Article 19, § 20, and shall also swear that he will well and truly assess all benefits resulting from the improvement

and all damages caused thereby.

ation of plans.

(c) Any assessor failing to take the oath within thirty (30) days after his appointment shall be deemed to have declined, and his place shall

be filled by the chancery court.

(d) All vacancies shall be filled by the chancery court. However, if the owners of a majority in assessed value of the real property in the project area shall petition for the appointment of a particular person or persons as assessor or assessors, it shall be the duty of the chancery court to appoint the person or persons so designated.

(e) The chancery court shall remove any of the assessors on the petition of owners of a majority in assessed value of the real property in

the district.

(f) The assessors herein provided for shall receive as compensation the sum of five dollars (\$5.00) each day they are engaged in carrying out their duties hereunder, together with their necessary expenses.

(g) The assessors shall proceed to assess the land within the project area on the basis of benefits accruing to the land from the works of improvement for the prevention of erosion, floodwater, and sediment damages, or the conservation, development, and utilization of soil and water resources and the disposal of water.

(h) A separate book for each project area shall be maintained with respect to assessments of benefits on the basis of benefits accruing to

the land from the works of improvement.

(i) The assessors shall cause to be inscribed in the book the description of each tract of land. The assessors shall assess the value of the benefits to accrue to each tract by reason of the works of improvement and shall enter the assessment of benefits opposite the description, together with an estimate of what the landowner will be required to pay on the assessment.

(j) The assessment shall embrace not merely the land, but shall also embrace all railroads, tramroads, and other improvements on land that

will be benefited by the works of improvement.

(k) There shall be placed opposite each tract of land the name of the owner, as shown by the last county assessment, but a mistake in the name shall not vitiate the assessment. Evident errors which occur in the county assessment list may be corrected.

(l) If any owner of land or other district has made any improvements or works in the project area that can be profitably used as a part of the approved improvement plan, the value of the improvement or works shall be appraised by the assessors, shall separately appear upon its assessment of benefits, and shall be paid for the district, either in cash or by a reduction of assessment of benefits.

(m) The assessors shall also assess all damages that will accrue to any landowner by reason of the proposed improvements, including all injury to lands taken or damaged. Where the assessors return no such assessment of damages as to any tract of land, it shall be deemed a

finding by the assessors that no damage will be sustained.

History. Acts 1937, No. 197, § 20, as added by Acts 1965, No. 424, § 5; A.S.A. 1947, § 9-923.

### 14-125-702. Filing and record of assessment.

(a) When an assessment is completed, the assessors shall subscribe an original and one (1) copy of the assessment and deposit the original with the clerk of the chancery court, where it shall be kept and preserved as a public record.

(b) The copy shall be certified by the clerk and returned to the

assessors to be preserved with the records of the district.

(c) If the project area includes land in more than one (1) county, a certified copy of the assessment shall also be deposited with the clerk of the chancery court in such other county or counties to be kept and preserved as a public record.

**History.** Acts 1937, No. 197, § 21, as added by Acts 1965, No. 424, § 5; A.S.A. 1947, § 9-924.

## 14-125-703. Notice — Hearing of complaints — Appeal.

(a) Upon the filing of assessment, the clerk shall give notice thereof by publication for two (2) weeks in some newspaper published and having a general circulation in the county or counties in which the lands in the project area are located.

(b) The notice shall give a description of the land assessed and state that the owners of the land may appear before the court on a day named therein and present complaints, if they have any, against the assess-

ment of any land in the project area.

(c) The day so named shall be not less than ten (10) days nor more

than thirty (30) days after the last publication of the notice.

(d) If no complaint is made as provided in this section, the assessment as deposited with the clerk shall be conclusive and the court shall enter an order confirming the assessment.

(e) Any owner of land within the project area who conceives himself to be aggrieved by the assessment of benefits or damages or deems that the assessment of any land within the project area is inadequate shall present his complaint to the court on the day named in the notice.

(f) The court shall consider the complaint and enter its finding thereon, either confirming the assessment or increasing or diminishing

it.

(g) Its findings shall have the force and effect of a judgment, from which an appeal may be taken within thirty (30) days, either by any such owner of land or by the board of directors.

**History.** Acts 1937, No. 197, § 21, as added by Acts 1965, No. 424, § 5; A.S.A. 1947, § 9-924.

## 14-125-704. Acquiescence in damage assessment — Demand for assessment — Condemnation.

Any owner of land may accept the assessment of damages in his favor made by the assessors or acquiesce in their failure to assess damages in his favor. He shall be construed to have done so unless he gives to the board, not later than the date of the hearing provided for in § 14-125-703, notice in writing that he demands an assessment of his damages by a jury. In this event, the board shall institute an action to condemn the land that will be taken or damaged in carrying out the works of improvement included in the approved improvement plan, which action

shall be in accordance with the proceedings provided in § 14-125-303(a)(3).

History. Acts 1937, No. 197, § 22, as added by Acts 1965, No. 424, § 5; A.S.A. 1947, § 9-925.

### 14-125-705. Reassessment of benefits generally.

- (a) The board shall have the power to order a reassessment of the benefits not more often than once a year, and this reassessment shall be made, advertised, and equalized as is provided for the original assessment of benefits.
- (b) All appeals of landowners objecting thereto must be taken and perfected within thirty (30) days from the time of the action of the court
- (c) If any obligation of the district shall be outstanding at the time of the reassessment, the liability thereon of land against which assessments of benefits have been confirmed shall be no less than the liability of the property by reason of the original assessment.

History. Acts 1937, No. 197, § 24, as added by Acts 1965, No. 424, § 5; A.S.A. 1947, § 9-927.

### 14-125-706. Reassessment after alteration of plans.

(a) If by reason of a change of plans pursuant to § 14-125-607, either the board or any landowners deem that the assessment on any land has become inequitable, they may petition the court. The court may thereupon refer the petition to the assessors, which shall reassess the land mentioned in the petition, increasing the assessment if greater benefits will be received and allowing damages if less benefits will be received or if damages will be sustained. A copy of the reassessment shall be deposited with the clerk of the chancery court as provided in § 14-125-702 in connection with the original assessment.

(b) In no event shall a reduction of assessments be made after the assessment of benefits has been confirmed by the court as provided in § 14-125-703 and obligations based on the assessments have been incurred, but any reduction in benefits shall be paid for by the district as damages. The claim for those damages shall be secondary and subordinate to the rights of the holders of bonds or other obligations or evidences of indebtedness which have theretofore been issued.

(c) The landowners shall have the same right of appeal from reassessment as provided for in this chapter in the case of the original assessment.

History. Acts 1937, No. 197, § 23, as added by Acts 1965, No. 424, § 5; A.S.A. 1947, § 9-926.

### 14-125-707. Taxes payable in full or in installments.

(a) The amount of interest which will accrue on notes, bonds, or other evidences of indebtedness issued by a district shall be included in and added to the taxes levied against the land in the project area, but the interest to accrue on the notes, bonds, or other evidences of indebtedness shall not be construed as a part of the costs of construction in determining whether the expenses and the costs of making the improvements exceed the assessment of benefits.

(b)(1) When the tax levies are made, the landowners shall have the privilege of paying the taxes in full, without interest, within thirty (30)

days after the levy becomes final.

(2) But all these taxes shall be made payable in installments, so that not more than ten percent (10%) of the taxes shall be collectible in any one (1) year against the wishes of the landowner. In the event that any landowner avails himself of this privilege, the deferred installments of the taxes shall bear interest at the rate of six percent (6%) per annum and shall be payable only in installments as levied.

(3) However, the commencement of the payment of the taxes in installments may be deferred for such period after the completion of the improvement plan as the chancery court deems to be in the best

interests of the landowners in the project area.

(4) If any landowner shall pay in full the levy of taxes against his land as herein provided, that land shall not be further liable by reason of the assessment of benefits or any reassessment thereof except a reassessment because of changed plans as provided in § 14-125-705, and then only to the extent of the increase in assessment, if any, because of the greater benefit thereby received. However, in case of any additional assessment for greater benefit, any landowner who shall have paid his previous tax levy in full shall have the privilege of paying in full the increase in tax levy in the manner herein provided.

**History.** Acts 1937, No. 197, § 26, as added by Acts 1965, No. 424, § 5; A.S.A. 1947, § 9-929.

## 14-125-708. Levy of tax — Lien — Appeal from tax assessment.

(a) The chancery court shall at the same time that the assessment of benefits is filed or at any subsequent time when called upon by the board enter an order, which shall have the force and effect of a judgment, providing that there shall be levied against the land within the project area a tax sufficient to pay the estimated cost of the improvement, with ten percent (10%) added for unforeseen contingencies. This tax shall be a charge against the land in the proportion to the amount of the assessment of benefits thereon and may be paid in full or in annual installments as provided in § 14-125-707.

(b) The tax so levied shall be a lien upon the land within the project area from the time that the tax is levied by the court and shall be entitled to preference over all demands, executions, encumbrances, or

liens whensoever created. It shall continue until the tax, with such penalties and costs as may accrue thereon, shall have been paid.

(c) The remedy against such levy of taxes shall be by appeal, and this appeal shall be taken within twenty (20) days from the date of the order by the court. On this appeal, the presumption shall be in favor of the legality of the tax.

**History.** Acts 1937, No. 197, § 27, as added by Acts 1965, No. 424, § 5; A.S.A. 1947, § 9-930.

## 14-125-709. Levy of tax for preliminary expenses.

(a) If the board does not deem it to the advantage of the project area to proceed immediately with the construction of the improvements upon the filing and confirmation of the assessment of benefits, it may cause to be levied and collected a tax based upon the assessment of benefits and collectible from the benefited land in the project area in the proportion to the amount of the assessment of benefits thereon for the purpose of paying preliminary expenses for development of the improvement plan for the project area.

(b) The board shall report to the court the rate of taxation necessary to be levied to pay the preliminary expenses, and thereupon it shall be the duty of the court to make levy of taxes upon the benefited land in the project area sufficient to pay the preliminary expenses, with ten percent (10%) added for unforeseen contingencies. This tax shall be extended upon the tax books of the county and collected along with other taxes in the same manner as taxes levied for construction

purposes, as provided in this chapter.

(c) If any project area is abandoned before the making of the assessment of benefits, the tax for preliminary expenses shall be levied at the rate fixed by the board upon the real property therein upon the basis of the assessment for county and state purposes.

**History.** Acts 1937, No. 197, § 28, as added by Acts 1965, No. 424, § 5; A.S.A. 1947, § 9-931.

### 14-125-710. Levy of tax for operation and maintenance.

(a) On or before the first Monday in October of each year, the board of directors shall estimate the amount necessary for the ensuing calendar year for operation and maintenance of the works of improvement provided for in the improvement plan and shall submit the estimate to the chancery court which approved the plan, with a request that a tax levy be made for the estimated amount.

(b) If the court finds the estimated amount to be fair and reasonable, it shall enter an order, which shall have the force and effect of a judgment, providing that there shall be levied against the benefited land within the project area a tax sufficient to pay the estimated cost of operation and maintenance. This tax shall be a charge against the

benefited land in the proportion to the amount of the assessment of benefits on the land.

**History.** Acts 1937, No. 197, § 32, as added by Acts 1965, No. 424, § 5; A.S.A. 1947, § 9-935.

## 14-125-711. Extension of taxes on county tax books — Collection of taxes.

(a) The amount of the taxes herein provided for shall be annually extended upon the tax books of the county, or counties if the project area is situated in more than one (1) county, and collected by the collector of the county along with the other taxes. For his services in making this collection, the collector shall receive a commission as is provided by law.

(b) The collections shall be by the collector paid over to the board of directors at or before the time that he is now required to make

settlement with the county treasurer for general taxes.

(c) The collection of taxes levied hereunder, the proceedings for the collection of delinquent taxes, and the periods of redemption from sales for foreclosure of tax liens shall be in accordance with §§ 14-125-707 and 14-125-708.

**History.** Acts 1937, No. 197, § 33, as added by Acts 1965, No. 424, § 5; A.S.A. 1947, § 9-936.

#### SUBCHAPTER 8 — BONDS AND EVIDENCES OF INDEBTEDNESS

SECTION.

14-125-801. Petition to borrow money or issue bonds, etc.

14-125-802. Notice — Issuance.

14-125-803. Terms and form of bonds, etc.

14-125-804. Court order approving proceedings.

SECTION.

14-125-805. Refunding bonds.

14-125-806. Security for bonds — Delinquencies.

Effective Dates. Acts 1983, No. 340, § 3: Mar. 7, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and that this Act is immediately necessary to accomplish these public improvements. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health

and safety shall be in effect from and after

its passage and approval."

Acts 1983, No. 531, § 3: Mar. 18, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and that this Act is immediately necessary to accomplish these public improvements. Therefore, an emergency is declared to exist and this Act, being nec-

essary for the preservation of the public peace, health and safety shall be in effect from and after its passage and approval.'

#### 14-125-801. Petition to borrow money or issue bonds, etc.

- (a) The board of directors may petition the chancery court for authority to borrow money or issue bonds or other evidences of indebtedness.
- (b) The petition of the board shall state whether it is desired that those bonds or other evidences of indebtedness shall be made payable from the proceeds of any revenues derived from the operation of the works of improvement included in the approved plan or from the proceeds of taxes levied against the land within the project area.

(c) The order of the court authorizing the issuance of the bonds or other evidences of indebtedness shall specify which sources shall be

liable for the payments of the principal and interest thereon.

**History.** Acts 1937, No. 197, § 29, as No. 340, § 1; 1983, No. 531, § 1; A.S.A. added by Acts 1965, No. 424, § 5; 1983, 1947, § 9-932.

#### 14-125-802. Notice — Issuance.

(a) The clerk of the court shall upon receipt of the petition give due notice by publication for two (2) weeks in some newspaper published and having a general circulation within the county in which the project area is located calling upon all persons owning land within the area to appear before the court upon a date to be fixed by the court, not less than ten (10) days nor more than thirty (30) days from the date of the last publication, to show cause in favor of or against the issuance of bonds or other evidences of indebtedness.

(b) If upon final hearing the court deems it to be in the best interest of the owners of the land, the court shall enter an order authorizing the

issuance of bonds or other evidences of indebtedness.

(c) The order of the court shall have the force and effect of a judgment and any aggrieved party may appeal from this order within thirty (30) days after the order has been made. If no appeal is taken within that time, the order shall be deemed conclusive and binding upon the lands

in the project area and upon the owners thereof.

(d) The board may thereupon borrow money at a rate of interest from any agency of the United States or any other public or private lending source; may issue promissory notes, negotiable bonds, or other evidences of indebtedness as required by the lender thereof; and may pledge and assign all assessments and revenues relating to the project area for the repayment thereof.

**History.** Acts 1937, No. 197, § 29, as No. 340, § 1; 1983, No. 531, § 1; A.S.A. added by Acts 1965, No. 424, § 5; 1983, 1947, § 9-932.

#### 14-125-803. Terms and form of bonds, etc.

(a) Bonds or other evidences of indebtedness issued under the terms of this chapter shall bear such date or dates, mature at such time or times not in excess of fifty (50) years, and be in such form and denomination as the board may determine.

(b) The board may sell, exchange, or hypothecate these obligations from time to time at such prices as shall best serve the interests of the owners of land within the project area, provided that any sale or exchange of the obligations at less than par value shall first have the approval of the chancery court.

**History.** Acts 1937, No. 197, § 29, as No. 340, § 1; 1983, No. 531, § 1; A.S.A. added by Acts 1965, No. 424, § 5; 1983, 1947, § 9-932.

### 14-125-804. Court order approving proceedings.

(a) After issuing any bonds or other evidences of indebtedness and before their sale, exchange, or hypothecation, the board may petition the chancery court for an order approving the legality and regularity of all proceedings leading up to the issuance of the bonds or other evidences of indebtedness. This order shall have the force and effect of a judgment from which an appeal may be taken within thirty (30) days by the board or by any owner of land against which assessments of benefits by the district have been confirmed.

(b) If the order of the court shall specify that the bonds or other evidences of indebtedness shall be made payable from revenues, the order shall declare specifically the revenues or portion thereof that shall be pledged to secure the payment of the principal and interest thereon. This order shall constitute a sufficient pledge to secure all such payments of all bonds or other evidences of indebtedness that may be issued in pursuance thereof. All revenues so designated shall be applied, except for a reasonable amount for annual operation and maintenance costs, first to the payment of such principal and interest. No tax shall be levied by or on behalf of the district against any land within the project area to pay any part of the principal or interest of the bonds or other evidence of indebtedness.

(c) If the order of the court authorizing the borrowing of money and the issuance of notes, bonds, or other evidences of indebtedness shall specify that they shall be made payable from the proceeds of assessments, that order shall provide for the levying of a tax against the benefited land within the project area in the proportion to the amount of the assessment of benefits thereon in the same manner and with the same effect as provided in § 14-125-708.

**History.** Acts 1937, No. 197, § 29, as No. 340, § 1; 1983, No. 531, § 1; A.S.A. added by Acts 1965, No. 424, § 5; 1983, 1947, § 9-932.

### 14-125-805. Refunding bonds.

Refunding bonds may be issued and may be sold, exchanged, or hypothecated under the procedure provided in §§ 14-125-801 — 14-125-804.

No. 340, § 1; 1983, No. 531, § 1; A.S.A. **History.** Acts 1937, No. 197, § 29, as added by Acts 1965, No. 424, § 5; 1983, 1947, § 9-932.

### 14-125-806. Security for bonds — Delinquencies.

- (a) All bonds issued under the terms of this chapter that are made payable from the proceeds of assessments shall be secured by a lien on all benefited lands in the project area unless the board of directors shall be able to sell bonds payable out of revenue only. The board shall see to it that a tax is levied annually and collected under the provisions of this chapter so long as it may be necessary to pay any bond issued under its authority.
- (b)(1) If any bond or interest coupon on any bond issued by the board is not paid within (30) days after its maturity, it shall be the duty of the chancery court of the proper county, on the application of any holder of the bond or interest coupon so overdue, to order the collection of the taxes aforesaid. At its discretion, the court may appoint a receiver therefor.
- (2) The proceeds of the taxes and collections shall be applied, after payment of costs, first to overdue interest and then to payment pro rata of all bonds issued by the board which are then due and payable.

(3) The board or receiver may be directed by suit to foreclose the lien of the taxes on the lands.

- (4) The suits so brought by the receiver shall be conducted in all matters as suits by the board, as hereinbefore provided, and with like effect.
- (5) The decrees and deeds herein shall have the same presumptions in their favor.
- (6) However, when all such sums have been paid, the receiver shall be discharged, and the affairs of the district with respect to the project area conducted by the board, as provided in this chapter.

History. Acts 1937, No. 197, § 30, as added by Acts 1965, No. 424, § 5; A.S.A. 1947, § 9-933.

### Subchapter 9 — Discontinuance of Districts

SECTION. SECTION. ity of continued operation. 14-125-901. Petition. 14-125-902. Notice and conduct of refer-14-125-904. Termination of district affairs - Certification of disendum. 14-125-903. Results of referendum solution. 14-125-905. Times for discontinuance. Practicability and feasibilSECTION.
14-125-906. Consent requirement.
14-125-907. Effect of prior district regulations and contracts—

Commission responsibilities.

#### 14-125-901. Petition.

- (a) At any time after five (5) years after the organization of a discrict under the provisions of this chapter, any twenty-five (25) owners of land lying within the boundaries of the district may file a petition with the Arkansas Soil and Water Conservation Commission praying that the operations of the district be terminated and the existence of the district discontinued.
- (b) The commission may conduct the public meetings and public hearings upon the petition as may be necessary to assist it in the consideration thereof.

**History.** Acts 1937, No. 197, § 12; Pope's Dig., § 11844; A.S.A. 1947, § 9-913.

#### 14-125-902. Notice and conduct of referendum.

- (a) Within sixty (60) days after a petition has been received by the commission, it shall:
  - (1) Give due notice of the holding of a referendum;

(2) Supervise the referendum; and

- (3) Issue appropriate regulations governing the conduct of the referendum.
- (b) The question shall be submitted by ballots upon which the words "FOR terminating the existence of the ......... (name of the soil conservation district to be here inserted)" and "AGAINST terminating the existence of the .......... (name of the soil conservation district to be here inserted)" shall be printed, with a direction to cross out or scratch off one (1) or the other of the propositions, leaving unmarked the proposition for which the voter wishes to vote.

(c) Only owners of lands lying within the boundaries of the district

shall be eligible to vote in the referendum.

(d) No informalities in the conduct of the referendum or in any matters relating thereto shall invalidate the referendum or its result if notice thereof shall have been given substantially as provided in this subchapter and the referendum shall have been fairly conducted.

**History.** Acts 1937, No. 197, § 12; Pope's Dig., § 11844; A.S.A. 1947, § 9-913.

# 14-125-903. Results of referendum — Practicability and feasibility of continued operation.

(a) The commission shall publish the result of the referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible.

(b) If the commission shall determine that the continued operation of the district is administratively practicable and feasible, it shall record

the determination and deny the petition.

- (c) If the commission shall determine that the continued operation of the district is not administratively practicable and feasible, it shall record that determination and shall certify that determination to the directors of the district.
- (d) In making that determination the commission shall give due regard and weight to:
  - (1) The attitudes of the owners of lands lying within the district;
- (2) The number of landowners eligible to vote in the referendum who shall have voted;
- (3) The proportion of the votes cast in the referendum in favor of the discontinuance of the district to the total number of votes cast;
- (4) The approximate wealth and income of the landowners of the district;
- (5) The probable expense of carrying on erosion control operations within the district; and
- (6) Such other economic and social factors as may be relevant to the determination, having due regard to the legislative findings set forth in §§ 14-125-102 14-125-104.
- (e) However, the commission shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of the district.

**History.** Acts 1937, No. 197, § 12; Pope's Dig., § 11844; A.S.A. 1947, § 9-913.

## 14-125-904. Termination of district affairs — Certification of dissolution.

(a) Upon receipt from the Arkansas Soil and Water Conservation Commission of a certification that the commission has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this subchapter, the directors shall forthwith proceed to terminate the affairs of the district.

(b) The directors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of the sale to be accounted into the State Transport

covered into the State Treasury.

(c) The directors shall thereupon file an application, duly verified, with the Secretary of State for the discontinuance of the district and shall transmit with the application the certificate of the Arkansas Soil and Water Conservation Commission setting forth the determination of the commission that the continued operation of the district is not administratively practicable and feasible.

(d) The application shall recite that the property of the district has been disposed of and the proceeds paid over as provided in this subchapter and shall set forth a full accounting of the properties and

proceeds of the sale.

(e) The Secretary of State shall issue to the directors a certificate of dissolution and shall record this certificate in an appropriate book or record in his office.

**History.** Acts 1937, No. 197, § 12; Pope's Dig., § 11844; A.S.A. 1947, § 9-913.

#### 14-125-905. Times for discontinuance.

The Arkansas Soil and Water Conservation Commission shall not, until five (5) years have elapsed for the date of the district organization nor more often than once in three (3) years thereafter:

(1) Entertain petitions for the discontinuance of any district;

(2) Conduct referenda upon petitions; or

(3) Make determinations pursuant to such petitions in accordance with the provisions of this chapter.

**History.** Acts 1937, No. 197, § 12; Pope's Dig., § 11844; A.S.A. 1947, § 9-913.

### 14-125-906. Consent requirement.

No one (1) individual or corporation may be forced against his or its will into any district that may be created under the provisions of this chapter without the consent of the individual or corporation, unless lands so held by the above-named individual or persons mentioned above is wholly within the district, or the lands are so located in the district that it would be necessary to carry out the purpose of this chapter by including these lands in the district.

**History.** Acts 1937, No. 197, § 12; Pope's Dig., § 11844; A.S.A. 1947, § 9-913.

#### 14-125-907. Effect of prior district regulations and contracts — Commission responsibilities.

(a) Upon issuance of a certificate of dissolution under the provisions of this subchapter, all regulations theretofore adopted and in force within the districts shall be of no further force and effect.

(b) All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period

provided in such contracts.

(c) The Arkansas Soil and Water Conservation Commission shall be

substituted for the district or directors as party to the contracts.

(d) The commission shall be entitled to all benefits and subject to all liabilities under the contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate the contracts by mutual consent or otherwise, as the directors of the district would have had.

History. Acts 1937, No. 197, § 12; Pope's Dig., § 11844; A.S.A. 1947, § 9-913.

#### **CHAPTERS 126-135**

[Reserved]

### SUBTITLE 8. PUBLIC FACILITIES GENERALLY

## CHAPTER 136 **GENERAL PROVISIONS**

[Reserved]

## **CHAPTER 137** PUBLIC FACILITIES BOARDS

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Effective Dates. Acts 1975, No. 142, § 23: Feb. 12, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that for the benefit of the people of this State, the increase of their commerce, welfare and prosperity, and the improvement and maintenance of their health and living conditions, it is essential and necessary that additional means be provided to assist in the financing of the public facilities to which this Act pertains. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1975 (Extended Sess., 1976), No 1224, § 4: Feb. 12, 1976. Emergency clause provided: "It is hereby found and declared by the General Assembly of the State of Arkansas that the additional powers which may be granted to Public Facilities Boards as authorized by this Act are immediately necessary for the benefit of the people of this State, the increase of their commerce, welfare and prosperity, and the improvement and maintenance of their health and living conditions. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health

and safety, shall take effect and be in force

from and after its passage and approval."

Acts 1977, No. 446, § 7: became law without Governor's signature, Mar. 16, 1977. Emergency clause provided: "It has been found and it is hereby declared that existing authority for the financing of public facilities projects, particularly health care facilities, is inadequate and that by reason of such inadequacy many needed projects have been delayed. Therefore, an emergency is declared to exist and this Act, being necessary for preservation of the public peace, health and safety, shall be in force upon its approval."

Acts 1981, No. 52, § 5: Feb. 12, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that in order to promote the conservation of energy and the development of new energy resources, which will benefit the people of this State by improving and maintaining their health and living conditions, it is essential and necessary that additional means be provided to assist in the financing of energy facilities to which this Act pertains. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval."

Acts 1981, No. 231, § 5: Feb. 26, 1981. Emergency clause provided: "It has been found and it is hereby declared that certain confusion exists regarding the types of facilities which may be provided and financed as public facilities projects as health care facilities and it is necessary that the intention and meaning of Act 142 of 1975 be clarified without delay in order that the public health and welfare may be advanced. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety shall be in force upon its approval."

Acts 1981, No. 528, § 9: Mar. 17, 1981. Emergency clause provided: "It has been found and it is hereby declared that educational facilities, as defined in this Act, are essential to the continued, welfare, safety and economic growth of the State of Arkansas and her people and that the availability of financing for educational facilities under Act No. 142 of 1975, as amended, is immediately necessary for the development of educational facilities prior to the beginning of the 1981-82 school year. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety shall be in effect upon its passage and approval."

Acts 1981, No. 827, § 6: Mar. 28, 1981.

Emergency clause provided: "It has been found and it is hereby declared that educational facilities, as defined in this Act, are essential to the continued health, welfare, safety and economic growth of the State of Arkansas and her people and that the availability of financing for educational facilities under Act No. 142 of 1975, as amended, is immediately necessary for the development of educational facilities prior to the beginning of the 1981-82 school year. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety shall be in effect upon its passage and approval."

Acts 1981, No. 857, § 3: Mar. 28, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the law relating to the establishment, operation and power of municipal and county public facilities boards does not contain specific authority for such public facilities boards to own and operate public transportation facilities; that the rapidly increasing cost of motor fuel makes it impractical for persons of low income or retired persons living on fixed incomes to own personal motor vehicles to use for their necessary travel; that it is in the best interest of energy conservation and would be financially helpful to low income persons to authorize public facilities boards to own and operate public transportation facilities and that this Act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981 (Ex. Sess.), No. 18, § 7: Nov. 25, 1981. Emergency clause provided: "It has been found and it is hereby declared that the development of hydroelectric power projects, as defined in this Act, is essential to the meeting of urgent needs of the inhabitants of this State for electrical energy and that the method of developing and financing such projects authorized by this Act, is essential to the meeting of urgent needs of the inhabitants of this State for electrical energy and that the method of developing and financing such projects authorized by this Act is the most efficient and expeditious method for developing and especial energy and that the method of developing and financing such projects authorized by this Act is the most efficient and expeditious method for developing and such projects authorized by this Act is the most efficient and expeditious method for developing and such projects authorized by this Act is the most efficient and expeditious method for developing and such projects authorized by this Act is the most efficient and expeditious method for developing and such projects authorized by this Act is the most efficient and expeditious method for developing and such projects authorized by this Act is the most efficient and expeditions method for developing and such projects authorized by this Act is the most efficient and expeditions method for developing and such projects authorized by this Act is the most efficient and expeditions method for developing and such projects authorized by this Act is the most efficient and expeditions method for developing and such projects authorized by this Act is the most efficient and expeditions method for developing and such projects authorized by this Act is the most efficient and expeditions method for developing and such projects authorized by this Act is the most efficient and expeditions method for developing and such projects authorized by this Act is the most efficient and expeditions method for developing and such projects authorized by this Ac

oping and financing some proposed hydroelectric power projects. Therefore, an emergency is declared and this Act, being necessary for the preservation of the public peace, health and safety, shall be in force upon its passage and approval."

Acts 1983, No. 221, § 2: Feb. 16, 1983. Emergency clause provided: "It is hereby found and determined that the provisions of recently enacted federal legislation, including the Tax Equity and Fiscal Responsibility Act of 1982, have created a serious uncertainty as to the manner in which revenue bonds issued by Public Facilities Boards established under the authority of Act 142 of 1975, as amended, should be executed and that such uncertainty threatens to delay the financing of projects by such Public Facilities Boards and to make such financings more expensive, thereby jeopardizing the ability of residents of the State of Arkansas to realize the benefits to be obtained from such projects, and it is further found that the immediate passage of this Act is necessary to resolve such uncertainties and to assist citizens of the State of Arkansas in obtaining the benefits from such projects. Therefore, an emergency is declared to exist, and this Act, being necessary for the immediate preservation of the public peace, health and safety of the citizens of the State of Arkansas, shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 531, § 3: Mar. 18, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and that this Act is immediately necessary to accomplish these public improvements. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety shall be in effect from and after its passage and approval."

Acts 1987, No. 47, § 8: Feb. 16, 1987. Emergency clause provided: "It is hereby found and is hereby declared by the General Assembly of the State of Arkansas that for the benefit of the people of this state the increase of their commerce, welfare and prosperity and the improvement

and maintenance of their health and living conditions, it is essential and necessary that additional sources for the payment of revenue bonds be authorized to assist in the financing of public facilities projects to which this act pertains. Therefore, an emergency is hereby declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1987, No. 929, § 4: Apr. 13, 1987. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that for the benefit of the people of this State, the increase of their commerce, welfare, and prosperity, and the improvement and maintenance of their health and living conditions, it is essential and necessary that additional means be provided to assist in the financing of public facilities to which this Act pertains. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1987, No. 1012, § 4: Apr. 14, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case Ricarte v. State, CR 86-31, a question has arisen over the validity of Act 1224 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 279, § 7: Feb. 28, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the changes this Act makes in the public facilities board law will result in the more efficient and effective opera-

tion of those boards; that the services provided by public facilities boards are in many instances vital to the public health and welfare; that the effect of this Act will be to provide better services to the people served by public facilities boards; and that this Act should go into effect immediately in order to enhance the services of the public facilities boards as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1992 (1st Ex. Sess.), Nos. 26 and 34, § 8: Mar. 10, 1992. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Public Facilities Boards Act is in need of strengthening; that this act provides checks and balances which will benefit the people of this state and that this act should go in effect immediately in order to better serve the people as soon as possible. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 349, § 5: Mar. 3, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law pertaining to public facilities boards is inadequate to the extent of the definition of capital improvement facilities which may be acquired by the boards; that the type of property which may be acquired by the boards should be expanded as soon as possible; that this act so provides and until it goes into effect the authority of the public facilities boards will be unduly restrictive. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

#### RESEARCH REFERENCES

**UALR L.J.** Note, Revenue Bonds—The Election Requirement: City of Hot Springs

v. Creviston, 288 Ark. 286, 705 S.W.2d 415 (1986), 9 UALR L.J. 63.

#### 14-137-101. Title.

This chapter may be referred to and cited as the "Public Facilities Boards Act."

**History.** Acts 1975, No. 142, § 1; A.S.A. 1947, § 20-1701.

#### **CASE NOTES**

**Cited:** Cortez v. Independence County, 287 Ark. 279, 698 S.W.2d 291 (1985).

## 14-137-102. Legislative determination and purpose.

(a) It is determined by the General Assembly that adequate:

(1) Facilities for health care;

(2) Decent, safe, and sanitary residential housing;

(3) Off-street parking facilities;

(4) Facilities for recreation and to develop tourism;

(5) Waterworks facilities;

(6) Sewer facilities;

(7) Facilities for securing or developing industry;

(8) Energy facilities;

(9) Educational facilities; and(10) Hydroelectric power projects

are essential to the physical and mental health, safety, and physical and economic welfare of the people of this state. In order to meet these public needs, it is essential that public financing be provided for the facilities. It is the purpose of this chapter to provide an alternative method of financing for the facilities.

(b) The General Assembly finds that:

- (1) The State of Arkansas is confronted with a severe energy crisis;
- (2) The demand for fuels has outstripped the available supplies;(3) The cost to the consumer for energy usage continues to increase

at an accelerated rate;
(4) A great and growing number of residents of this state can no

(4) A great and growing number of residents of this state can no longer afford basic energy needs;

(5) The energy crisis has adversely affected the growth and stability of agriculture, commerce, and industry within the state, producing widespread unemployment:

(6) The energy crisis will be perpetuated by a continued dependence on depletable energy resources which are subject to rapid increases in price and uncertain availability, and by the wasteful and inefficient use of available energy supplies;

(7) These conditions are inimical to the economic security of the state

and the health, welfare, and prosperity of its citizens.

(c) It is declared to be the public policy and responsibility of this state to encourage energy conservation and to promote the development and use of renewable energy resources in order to alleviate the undesirable social and economic conditions created by the energy crisis.

(d) The General Assembly finds that the public policy and responsibility of the state as set forth in this section cannot be fully attained without the use of public financing, and it is the purpose of this chapter to make such financing available for energy facilities which will reduce energy consumption and make use of renewable energy resources in residential, agricultural, commercial, or industrial applications.

(e) It is found that the providing of health care through establishment of health care facilities in many cities and counties in Arkansas has been facilitated by the availability of assistance by public facilities boards created by counties and cities; that it is in the best interest of the citizens of the State of Arkansas that assistance be provided, in the discretion of local public facilities boards, for all forms of health care for the citizens in such counties and cities; and that confusion exists regarding whether certain facilities are properly qualified under the terms of this chapter, and amendment thereof is necessary for the clarification of the facilities comprehended within the term "health care facilities" within the meaning of this chapter.

**History.** Acts 1975, No. 142, § 2; 1981, Sess.), No. 18, § 1; A.S.A. 1947, §§ 20-No. 231, § 1; 1981, No. 827, § 1; 1981 (Ex. 1702, 20-1702.1.

#### **CASE NOTES**

**Cited:** Cortez v. Independence County, 287 Ark. 279, 698 S.W.2d 291 (1985).

#### 14-137-103. Definitions.

As used in this chapter, unless the context otherwise requires:

- (1) "Public facilities board" or "board" means any board organized pursuant to the provisions of this chapter;
  - (2) "State" means the State of Arkansas;
  - (3) "Municipality" means any incorporated city or town in this state;
  - (4) "County" means any county in this state;
- (5) "Governing body" means the council, board of directors, or other like body in which the legislative functions of a municipality are vested, or the quorum court of the county as it shall have been duly constituted and acting as the legislative body of the county pursuant to the provisions of Arkansas Constitution, Amendment 55, or if not so constituted and acting, the county court of the county;

(6) "Facilities" means real property, personal property, or mixed property of any and every kind including, without limitation, rights-of-way, utilities, materials, equipment, fixtures, machinery, furniture, furnishings, buildings, and other improvements of every kind;

(7) "Health care facilities" means facilities for furnishing physical or mental health care including, without limitation, hospitals, nursing homes, rest homes, long-term care facilities, and offices and clinics of doctors of medicine, dentists, optometrists, podiatrists, chiropractors, and related facilities;

(8) "Residential housing facilities" means facilities for single and multifamily residential housing units of any and all kinds and such other facilities as are incidental or appurtenant thereto;

(9) "Off-street parking facilities" means facilities for the off-street parking of motor vehicles on, above, or below ground level including, without limitation, lots, garages, decks, and such other facilities as are

incidental or appurtenant thereto;

(10) "Recreational and tourist facilities" means facilities for the securing and developing of athletics, recreation, relaxation, travel, entertainment, cultural development, and other recreational and tourism activities including, without limitation, hotels, motels, inns, lodges, camping centers, folklore facilities, cultural development facilities, auditoriums, convention facilities, restaurants in connection with other facilities for the securing and developing of recreation or tourism, parks, scenic roadways and walkways, stadiums, arts and crafts centers, museums, marinas, swimming pools, tennis courts, golf courses, gymnasiums, transportation facilities, park facilities, and tourist information and assistance centers, and recreation areas;

(11) "Waterworks facilities" means facilities for the furnishing of water for domestic, commercial, agricultural, and industrial purposes including, without limitation, mains, hydrants, meters, valves, standpipes, storage tanks, pumping tanks, intakes, wells, impounding reservoirs, purification plants, and lakes, watercourses, or water sup-

plies pertaining thereto;

(12) "Sewer facilities" means facilities for the collection, treatment, and disposal of sewage, liquid and solid waste, and industrial waste;

(13) "Acquire" means to obtain, at any time by gift, purchase, or other arrangement, any project or any portion of a project, whether theretofore constructed and equipped, theretofore partially constructed and equipped, or being constructed and equipped at the time of acquisition, for such consideration and pursuant to such terms and conditions as the board shall determine;

(14) "Construct" means to acquire or build, in whole or in part, in such manner and by such method, including contracting therefor, and if the latter, by negotiation or bidding upon such terms and pursuant to such advertising as determined by the board, under the circumstances existing at the time, as will most effectively serve the purposes of this chapter:

(15) "Equip" means to install or place in or on any building or structure equipment of any and every kind, whether or not affixed, including, without limitation, building service equipment, fixtures, heating equipment, air conditioning equipment, machinery, furniture,

furnishings, and personal property of every kind;

(16) "Lease" means to lease for such rentals, for such periods, and upon such terms and conditions as the board shall determine and the granting of such extension and purchase options for such prices and upon such terms and conditions as the board shall determine;

(17) "Sell" means to sell for such price, in such manner, and upon such terms as the board shall determine including, without limitiation,

public or private sale, and if public, pursuant to such advertisement as the public facilities board shall determine, for cash or on credit payable in lump sum or in such installments as the board shall determine, and if on credit, with or without interest and at such rate as the board may determine;

(18) "Ordinance" means, as to counties in which the quorum court of the county is not at the time duly constituted and acting as the legislative body of the county pursuant to the provisions of Arkansas Constitution, Amendment 55, an order of the county court of the county;

(19) "Lend" means to extend credit, make a loan to, acquire the obligations of, and generally, without limitation, engage in the financing of any facilities which the board shall have authority to construct, acquire, or equip pursuant to this chapter, upon such terms and with such security as the board deems suitable;

(20) "Energy facilities" means facilities in residential, agricultural,

commercial, or industrial applications which:

(A) Reduce the amount of energy required to perform desired tasks; or

(B) Utilize renewable energy resources to supply energy needs;

(21) "Renewable energy resources" means any technology or source of energy which:

(A) Does not depend on the use of depletable fossil fuels such as oil,

natural gas, and coal, or nuclear fuels; and

(B) Makes use of nondepletable supplies of energy including, without limitation, solar, wind, bioconversion, falling or flowing water, geothermal deposits, or municipal, commercial, industrial, agricultural, or individual waste products, or makes use of

cogeneration technology for the production of energy;

- (22) "Educational facilities" means real, personal, and mixed property of any and every kind intended for use by an educational institution in furtherance of its educational program including, but not limited to, dormitories, classrooms, laboratories, athletic fields, administrative buildings, utilities, equipment, and other property for use therein or thereon;
- (23) "Emergency medical health care facilities" means real, personal, and mixed property of any and every kind used to furnish emergency medical health care and emergency medical services including, but not limited to:
  - (A) Ambulances or vehicles specifically designed, equipped, and licensed for transporting the sick or injured;

(B) Emergency medical equipment and supplies;(C) Dispatching and other communication systems;

(D) Computers for billing, collections, and system design and control; and

(E) Training and administrative facilities;

(24) "Hydroelectric power project" means any facilities intended to be employed in the generation of electrical energy by the use of water as the source of generating power, whether standing, running, or falling, and facilities incidental or related thereto.

History. Acts 1975, No. 142, § 3; 1977, No. 446, § 1; 1981, No. 52, § 2; 1981, No. 231, § 2; 1981, No. 703, § 1; 1981, No. 827, § 2; 1981 (Ex. Sess.), No. 18, § 2; 1981 (Ex. Sess.), No. 23, § 8(a); A.S.A. 1947, § 20-1703; Acts 1989, No. 55, § 2. Publisher's Notes. Acts 1985. No.

1001, § 8, provided that nothing in that act repealed, by implication or otherwise, Acts 1981 (Ex. Sess.), No. 23, which is codified as this section and §§ 14-43-601, 14-54-704, 14-266-101 — 14-266-110, and 14-137-106.

#### CASE NOTES

**Educational Facilities.** 

"Educational facilities" includes a private college and a project to be financed

there. Cortez v. Independence County, 287 Ark. 279, 698 S.W.2d 291 (1985).

## 14-137-104. Provisions supplemental and controlling.

(a) This chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws.

(b) The construction of facilities for public facilities projects by or on behalf of a public facilities board under the provisions of this chapter need not comply with the requirements of any other law applicable to

the construction of public works or facilities.

(c) Notwithstanding any other provisions of state law or ordinance of any municipality or county to the contrary, except as otherwise expressly provided in this chapter, none of the powers granted to a board under the provisions of this chapter shall be subject to the supervision or regulation or require the approval or consent of the state, or of any municipality, county, or political subdivision of the state, or of any commission, board, body, bureau, official, or agency of the state or any municipality, county, or political subdivision.

**History.** Acts 1975, No. 142, § 19; A.S.A. 1947, § 20-1719.

#### 14-137-105. Construction.

This chapter, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes of it.

**History.** Acts 1975, No. 142, § 20; A.S.A. 1947, § 20-1720.

#### CASE NOTES

**Cited:** Cortez v. Independence County, 287 Ark. 279, 698 S.W.2d 291 (1985).

## 14-137-106. Creation — Purposes.

- (a)(1) Any municipality or any county is authorized to create one (1) or more public facilities boards and to empower each board to own, acquire, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, contract concerning, or otherwise deal in or dispose of health care facilities, emergency medical health care facilities, residential housing facilities, off-street parking facilities, recreational and tourist facilities, waterworks facilities, sewer facilities, facilities for securing or developing industry, energy facilities, hydroelectric power projects, education facilities, other capital improvement facilities, or any combination of such facilities, or any interest in such facilities including, without limitation, leasehold interests in and mortgages on such facilities.
- (2) Public facilities boards created under this chapter are not administrative boards under the County Government Code § 14-14-101 et seq.
- (b) The boards may be further empowered to make loans to mortgage lenders, defined as all banks or trust companies, industrial loan institutions, credit unions, mortgage banking firms, national banking associations, savings and loan associations and investment banking firms that maintain a principal office or place of business in the state, and all insurance companies authorized to do business in the state, on condition that the mortgage lenders use the proceeds of each loan to provide financing for either health care facilities, emergency medical health care facilities, residential housing facilities, off-street parking facilities, recreational and tourist facilities, waterworks facilities, sewer facilities, facilities for securing or developing industry, energy facilities, educational facilities, hydroelectric power projects, other capital improvement facilities, or any combination of such facilities.

(c) Any such undertaking by a board will be sometimes referred to in

this chapter as a "public facilities project" or "project".

(d) As used in this section, the term "other capital improvement facilities" means, whether obtained by purchase, lease, construction, reconstruction, restoration, improvement, alteration, repair, or other means, any physical public betterment or improvement or any preliminary plans, studies, or surveys relative thereto; lands or rights in land, including, without limitations, leases, air rights, easements, rights-of-way, or licenses; furnishings, machinery, vehicles, apparatus, equipment, or other personal property for use by the city or county; and any furnishings, machinery, vehicles, apparatus, or equipment for any public betterment or improvement, which shall include, without limiting the generality of the foregoing, the following:

(1) Any and all facilities for city or town halls, courthouses, and

administrative, executive, or other public offices;

(2) Court facilities, jails, and police and sheriff stations, apparatus, and facilities;

(3) Fire fighting facilities and apparatus;

(4) Public health facilities and apparatus;

- (5) Hospitals, nursing homes, and similar extended-care facilities;
- (6) Residential housing for low and moderate income, elderly, or individuals with disabilities and families;

(7) Parking facilities and garages;

(8) Educational and training facilities for public employees;

- (9) Auditoriums, stadiums, and convention, meeting, or entertainment facilities;
  - (10) Ambulance and other emergency medical service facilities;

(11) Civil defense facilities;

(12) Air and water pollution control facilities;

(13) Drainage and flood control facilities and storm sewers;

(14) Arts and crafts centers;(15) Museums and libraries;

(16) Public parks, playgrounds, or other public open spaces;

(17) Marinas;

- (18) Swimming pools, tennis courts, golf courses, camping facilities, gymnasiums, and other recreational facilities;
  - (19) Tourist information and assistance centers;

(20) Historical, cultural, natural, or folklore sites;

(21) Fair and exhibition facilities;

- (22) Streets and street lighting, alleys, sidewalks, roads, bridges, and viaducts;
- (23) Airports, passenger or freight terminals, and hangars and related facilities;
- (24) Barge terminals, ports, harbors, ferries, wharves, docks, and similar marine services; and slack water harbors, water resource facilities, waterfront development facilities, and navigational facilities;

(25) Public transportation facilities;

(26) Public water systems and related transmission and distribution facilities; storage facilities, wells, and impounding reservoirs, treatment plants, lakes, dams, watercourses, and water rights;

(27) Sewer collection systems and treatment plants;(28) Maintenance and storage buildings and facilities;

(29) Incinerators, and garbage and solid waste collection disposal, compacting, and recycling facilities of every kind; and

(30) Social and rehabilitative services facilities.

History. Acts 1975, No. 142, § 4; 1975 (Extended Sess., 1976), No. 1224, § 1; 1977, No. 446, § 2; 1981, No. 857, § 1; 1981 (Ex. Sess.), No. 18, § 3; 1981 (Ex. Sess.), No. 23, § 8(b); 1985, No. 973, §§ 1, 2; A.S.A. 1947, §§ 20-1704, 20-1704.2; Acts 1987, No. 929, § 1; reen. Acts 1987, No. 1012, § 1; Acts 1989, No. 55, § 1; 1991, No. 279, § 1; 1993, No. 349, § 1; 1997, No. 208, § 10.

A.C.R.C. Notes. Part of this section was reenacted by Acts 1987, No. 1012,

§ 1. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

Acts 1989, No. 55, § 1, provided, in part: "The term 'other capital improvement facilities' shall, until June 30, 1991, include, in addition to the foregoing, electric distribution facilities, and facilities related thereto, in the case of public facil-

ities boards heretofore or hereafter created by municipalities and counties which have outstanding, on January 1, 1989, debt which was issued or incurred for the purpose of financing hydroelectric power facilities."

Acts 1997, No. 208, § 1, codified as § 22-4-408, provided: "Legislative intent and purpose. The General Assembly hereby acknowledges that many of the laws relating to individuals with disabilities are antiquated, functionally outmoded, derogatory, ambiguous or are inconsistent with more recently enacted provisions of the law. Consequently, it is the intent of the General Assembly and

the purpose of this act to clarify the relevant chapters of Titles 1, 6, 9, 13, 14, 16, 17, 20, 22, 23, and 27 of the Arkansas Code Annotated of 1987."

**Publisher's Notes.** Acts 1985, No. 1001, § 8, provided that nothing in that act repealed, by implication or otherwise, Acts 1981 (Ex. Sess.), which is codified as this section and §§ 14-43-601, 14-54-704, 14-266-101 — 14-266-110, and 14-137-103.

Amendments. The 1993 amendment rewrote (d).

The 1997 amendment substituted "individuals with disabilities" for "handicapped persons" in (d)(6).

## 14-137-107. Creating ordinance — Authority.

(a) Each public facilities board shall be created by ordinance of the governing body. The ordinance:

(1) Shall give the board a name which:

- (A) Shall include the name of the creating municipality or county;
- (B) Shall be descriptive of the powers granted to the board; and
- (C) Shall be distinctive from the name given to any other board created by the municipality or county;

(2)(A) Shall specify the powers granted to the board; and

- (B) May place specific limitations on the exercise of the powers granted, including limitations on the board's area of operations, the use of public facilities projects of the board, and the board's authority to issue bonds.
- (b) Unless limited by the creating ordinance, each board created by a municipality shall be authorized to accomplish public facilities projects within or near or partly within and partly near the municipality. Each board created by a county shall be authorized to accomplish public facilities projects within or partly within and partly without the county.

**History.** Acts 1975, No. 142, § 5; A.S.A. 1947, § 20-1705.

## 14-137-108. Board members.

(a)(1) Each public facilities board shall consist of five (5) members unless there is an expansion of the board to provide services outside the boundaries of the governmental unit from which it obtains power.

(2) The provisions of this subsection shall be applicable only to county public facilities boards in counties having a population of less than one hundred fifty thousand (150,000) according to the most recent federal decennial census and to all public facilities boards established by municipalities having a population of less than one hundred thousand (100,000) according to the most recent federal decennial census, regardless of where located.

(3)(A) The initial members shall be appointed by the mayor of the creating municipality or the county judge of the creating county for terms of one (1), two (2), three (3), four (4), and five (5) years, respectively.

(B) Successor members shall be elected by a majority of the board

for terms of five (5) years each.

(C) Each member shall serve until his successor is elected and qualified.

(D) A member shall be eligible to succeed himself.

(4) Each member shall qualify by taking and filing with the clerk of the municipality or county creating the board his oath of office in which he shall swear to support the Constitution of the United States and the Constitution of the State of Arkansas and to discharge faithfully his duties in the manner provided by law.

(5) In the event of a vacancy in the membership of the board, however caused, a majority of the board shall elect a successor member

to serve the unexpired term.

(6) The members of the board shall receive no compensation for their services, but shall be entitled to reimbursement for reasonable and necessary expenses incurred in the performance of their duties.

(7) Any member of the board may be removed for misfeasance, malfeasance, or willful neglect of duty, by the mayor of the municipality or the county judge of the county, as the case may be, which created the board, after reasonable notice of and an opportunity to be heard concerning the alleged grounds for removal.

(8)(A)(i) If the jurisdiction of a board, pursuant to interlocal agreements, expands to provide services outside the boundaries of the governmental unit from which it obtains power, then not more than two (2) additional members per governmental unit may be added

pursuant to the terms of any relevant interlocal agreement.

(ii) These members shall initially be appointed by the mayor of the newly participating municipality, or the county judge of the newly participating county, and shall serve for a term agreed upon in the interlocal agreement, provided that the term shall not exceed five (5) years.

(B) The other provisions of this section shall apply to these additional members, provided that no additional member shall be

eligible to serve as chairman of the board.

(b)(1) County public facilities boards in counties having a population of one hundred fifty thousand (150,000) or more according to the most recent federal decennial census and public facilities boards established by all municipalities having a population of one hundred thousand (100,000) or more according to the most recent federal decennial census shall consist of five (5) members unless there is an expansion of the board to provide services outside the boundaries of the governmental unit from which it obtains power.

(2)(A) The initial members shall be appointed by the mayor of the creating municipality or the county judge of the creating county

subject to confirmation by the governing body of the municipality or county for terms as determined by the governing body of the municipality or county. The terms shall be set in such manner as will result in the confirmation of terms are a stargeted basis.

in the expiration of terms on a staggered basis.

(B) Successor members shall be appointed by the mayor of the creating municipality or the county judge of the creating county subject to confirmation by the governing body of the municipality or county for terms as determined by the governing body of the municipality or county. The terms shall be set in such manner as will result in the expiration of terms on a staggered basis.

(C) Each member shall serve until his successor is elected and

qualified.

(D) A member shall be eligible to succeed himself.

- (E) The governing body of the municipality or county may, by ordinance, limit the number of terms a person may serve on the board.
- (3) Each member shall qualify by taking and filing with the clerk of the municipality or county creating the board his oath of office in which he shall swear to support the Constitution of the United States and the Constitution of the State of Arkansas and to discharge faithfully his duties in the manner provided by law.

(4) In the event of a vacancy in the membership of the board, however caused, a majority of the board shall elect a successor member

to serve the unexpired term.

(5) The members of the board shall receive no compensation for their services, but shall be entitled to reimbursement for reasonable and necessary expenses incurred in the performance of their duties.

(6) Any member of the board may be removed for misfeasance, malfeasance, or willful neglect of duty, by the mayor of the municipality or the county judge of the county, as the case may be, which created the board after reasonable notice of and an opportunity to be heard concerning the alleged grounds for removal.

(7)(A)(i) If the jurisdiction of a board, pursuant to interlocal agreements, expands to provide services outside the boundaries of the governmental unit from which it obtains power, then not more than two (2) additional members per governmental unit may be added pursuant to the terms of any relevant interlocal agreement.

(ii) These members shall initially be appointed by the mayor of the newly participating municipality, or the county judge of the newly participating county, and shall serve for a term agreed upon in the interlocal agreement, provided that the term shall not exceed five (5)

years.

(B) The other provisions of this section shall apply to these additional members, provided that no additional member shall be eligible to serve as chairman of the board.

**History.** Acts 1975, No. 142, § 6; 1985, 20-1706.1; Acts 1987, No. 407, § 1; 1987, No. 937, §§ 1, 2; A.S.A. 1947, §§ 20-1706, No. 929, § 2; 1992 (1st Ex. Sess.), No. 26,

§§ 2, 3; 1992 (1st Ex. Sess.), No. 34, §§ 2, 3.

Amendments. The 1992 (1st Ex. Sess.) amendment by Nos. 26 and 34 inserted

(a)(2); redesignated former (b)(1)-(4) as (a)(3)(A)-(D); redesignated former (c)-(g) as (a)(4)-(8); and added present (b).

## 14-137-109. Officers — Executive director.

(a)(1) The members of each public facilities board shall meet and organize by electing one (1) of their number as chairman, one (1) as vice chairman, one (1) as secretary, and one as treasurer, and such officers shall be elected annually thereafter in like manner.

(2) The duties of secretary and treasurer may be performed by the

same member.

(b) The board may also appoint an executive director who shall serve at the pleasure of the board and receive such compensation as shall be fixed by the board.

**History.** Acts 1975, No. 142, § 6; A.S.A. 1947, § 20-1706; Acts 1991, No. 279, § 2.

## 14-137-110. Meetings — Records.

(a)(1) Each public facilities board shall meet upon the call of its chairman, or a majority of its members, and at such times as may be specified in its bylaws for regular meetings. A majority of its members shall constitute a quorum for the transaction of business.

(2) The affirmative vote of a majority of the members present at a meeting of the board shall be necessary for any action taken by the

board.

(3) Any action taken by the board may be authorized by resolution, and such resolution shall take effect immediately unless a later effective date is specified in the resolution.

(4) No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the

board.

- (b)(1) The secretary of the board shall keep a record of the proceedings of the board and shall be custodian of all books, documents, and papers filed with the board and of the minute book or journal of the board and of its official seal.
- (2) The secretary may cause copies to be made of all minutes and other records and documents of the board. He may give certificates under the official seal of the board to the effect that the copies are true copies, and all persons dealing with the board may rely upon the certificates.
- (3) County public facilities boards located in counties having a population of one hundred fifty thousand (150,000) or more persons according to the most recent federal decennial census shall preserve and maintain their records and documents at such locations and in such manner as prescribed by ordinance of the municipality or county which created the boards.

History. Acts 1975, No. 142, § 6; A.S.A. 1947, § 20-1706; Acts 1992 (1st Ex. Sess.), No. 26, § 1; 1992 (1st Ex. Sess.), No. 34, § 1.

# 14-137-111. Powers generally — Bidding and appraisal requirements.

(a) Each public facilities board is authorized and empowered:

(1) To have perpetual succession as a body politic and corporate and to adopt bylaws for the regulation of its affairs and the conduct of its business;

(2) To adopt an official seal and alter it at pleasure;

(3) To maintain an office at such place in the muncipality or county creating the board as it may designate;

(4) To sue and be sued in its own name;

(5) To fix, charge, and collect rents, fees, and charges for the use of

any public facilities project;

(6) To employ and pay compensation to such employees and agents, including attorneys, consulting engineers, architects, surveyors, accountants, financial experts, and such other employees and agents as may be necessary in its judgment, and to fix their compensation;

(7) To accomplish public facilities projects as authorized by this

chapter and the ordinance creating the board;

(8) To do any and all other acts and things in this chapter authorized or required to be done, whether or not included in the powers mentioned in this section;

(9) To lend money, directly or indirectly, for the financing of the construction, acquisition, and equipment of all or a portion of a public

facilities project;

- (10) To invest money, including a major portion of the proceeds of any issue of bonds for the term of the bonds or a shorter period, in consideration of a contract to make payment or payments to provide for the payment of the principal, premium, if any, and interest on the bonds when due;
- (11) In the acquisition, construction, and equipment of, and in the operation of, hydroelectric power projects:

(A) To contract with any regulated public utility for the supplying of electrical energy produced by any such project, upon terms accept-

able to the board;

(B) To apply to the appropriate agencies of the state, the United States, or any state thereof, and to any other proper agency for such licenses, permits, certificates, or approvals as may be necessary, and to obtain, hold, and use the licenses, permits, certificates, and approvals. However, nothing contained in this subdivision shall be construed to require a board to obtain any license, certificate, permit, or approval from the Arkansas Public Service Commission; and

(12) To do any and all other things necessary or convenient to

accomplish the purposes of this chapter.

(b) Hereafter, when purchasing or selling real or personal property, each public facilities board shall be subject to the bidding and appraisal requirements that apply to the county or city which created the board.

**History.** Acts 1975, No. 142, § 7; 1977, No. 446, § 3; 1981 (Ex. Sess.), No. 18, § 4; A.S.A. 1947, § 20-1707; Acts 1987, No. 47, § 1; 1991, No. 506, § 1.

Publisher's Notes. Acts 1987, No. 47, § 5, provided that the purpose of this act is to authorize public facilities boards to finance all, or a portion of, public facilities projects by issuing revenue bonds, a portion of the proceeds of which may be used to pay the costs of all, or a portion, of a public facilities project and expenses of

issuing the bonds and a major portion of the proceeds of which may be invested in consideration of contracts to make payments at least sufficient, alone or with other available revenues pledged, to pay the principal of, premium, if any, and interest on the bonds when due, and the General Assembly declared that the issuance of such bonds for such purposes is a public purpose for the issuance of revenue bonds under Ark. Const. Amend. 65.

# 14-137-112. Acquiring and transferring facilities.

(a) Any municipality or county may acquire facilities for a public facilities project, or any portion thereof, including a project site, by gift, purchase, lease, or condemnation, and may transfer any such facilities to a public facilities board created by the municipality or county by sale, lease, or gift.

(b) Transfer may be authorized by ordinance of the governing body without regard to the requirements, restrictions, limitations, or other

provisions contained in any other law.

(c) Public facilities boards which operate water works facilities may exercise the power of eminent domain in accordance with the proce-

dures prescribed by § 18-15-201 et seq.

(d) A county public facilities board may transfer land to the Arkansas State Game and Fish Commission with or without compensation, provided that the Arkansas State Game and Fish Commission agrees to develop a wildlife management area or to construct, stock, and maintain a public fishing lake thereon.

**History.** Acts 1975, No. 142, § 17; A.S.A. 1947, § 20-1717; Acts 1991, No. 279, § 3; 1991, No. 1091, § 6.

# 14-137-113. Postsecondary education or occupational training facilities.

Any public facilities board organized under the provisions of this chapter is authorized and empowered to include in the public facilities projects granted to the board, facilities for postsecondary education and occupational training programs, unless the ordinance creating the board placed specific limitations on the exercise of the powers granted or, from and after the passage of this section, the governing board limits by ordinance the public facilities projects in which the board is empowered to accomplish.

History. Acts 1981, No. 528, § 4; A.S.A. 1947, § 20-1704.1.

Publisher's Notes. In reference to the term "the passage of this section", Acts 1981, No. 528, was signed by the Governor and became effective on March 17, 1981.

#### CASE NOTES

Bonds.

Legislative approval of bonds for financing higher educational facilities is found in this section which empowers public facilities boards to include "facilities for

post-secondary education" in public facilities projects. Cortez v. Independence County, 287 Ark. 279, 698 S.W.2d 291 (1985).

## 14-137-114. Tax exemption of properties.

It is declared that each public facilities board created pursuant to this chapter will be performing public functions and will be a public instrumentality of the municipality or county creating the board. Accordingly, all properties at any time owned by the board and the income therefrom shall be exempt from all taxation in the State of Arkansas.

History. Acts 1975, No. 142, § 14; A.S.A. 1947, § 20-1714.

## 14-137-115. Use of funds and revenue — Bonds.

(a) Public facilities boards are authorized to use any available funds and revenues for the accomplishment of all or a portion of public facilities projects and may issue bonds, as authorized by this chapter, for the accomplishment of all or a portion of public facilities projects, either alone or together with other available funds and revenues.

(b) Bonds may be issued in principal amounts as shall be sufficient to pay the costs of issuing bonds, the amount necessary for a reserve, if deemed desirable, the amount necessary to provide for debt service until revenues for the payment thereof are available, the amount necessary to acquire a contract providing for payments to the board at a rate or rates at least sufficient to provide for, alone or with any other revenues that may be pledged, debt service on the bonds, if deemed desirable, and to pay any other costs and expenditures of whatever nature incidental to the accomplishment of all or a portion of the public facilities project involved and the placing of it in operation.

(c) Each county public facilities board in a county having a population of one hundred fifty thousand (150,000) or more according to the most recent federal decennial census and each public facilities board established by a municipality having a population of more than one hundred thousand (100,000) according to the most recent federal decennial census, regardless of where located, shall annually contract with a certified public accountant to perform an audit of the board's revenues which are not pledged to outstanding bonded indebtedness. The board shall furnish a copy of the audit report to the governing body of the municipality or county which created the board and the board

shall make the audit report available to the public for inspection under the Freedom of Information Act, § 25-19-101 et seq.

**History.** Acts 1975, No. 142, § 8; A.S.A. 1947, § 20-1708; Acts 1987, No. 47, § 2; 1992 (1st Ex. Sess.), No. 26, § 4; 1992 (1st Ex. Sess.), No. 34, § 4.

Publisher's Notes. As to purpose of

Acts 1987, No. 47, see Publisher's Notes, § 14-137-111.

Amendments. The 1992 (1st Ex. Sess.) amendment by Nos. 26 and 34 added (c).

## 14-137-116. Issuance, sale, and execution of bonds.

- (a)(1) The issuance of bonds shall be by resolution of the public facilities board.
- (2) As the resolution authorizing their issuance may provide, the bonds may:
  - (A) Be coupon bonds payable to bearer, but subject to registration as to principal or as to principal and interest;

(B) Be exchangeable for bonds of another denomination;

(C) Be in such form and denominations;

(D) Be made payable at such places within or without the state;

(E) Be issued in one (1) or more series;

(F) Bear such date or dates, and mature at such time or times, not exceeding forty (40) years from the respective dates;

(G) Bear interest at such rate or rates;

- (H) Be payable in such medium of payment;(I) Be subject to such terms of redemption; and
- (J) Contain such terms, covenants, and conditions including, without limitation, those pertaining to:

(i) The custody and application of the proceeds of the bonds;

(ii) The collection and disposition of revenues;

(iii) The maintenance of various funds and reserves;

- (iv) The nature and extent of the security and pledging of revenues;
- (v) The rights, duties, and obligations of the board and the trustee for the holders and registered owners of the bonds; and

(vi) The rights of the holders and registered owners of the bonds.

(3) There may be successive bond issues for the purpose of financing the same public facilities project, and there may be successive bond issues for financing the cost of reconstructing, replacing, constructing additions to, extending, improving, and equipping public facilities projects already in existence, whether or not originally financed by bonds issued under this chapter, with each successive issue to be authorized as provided by this chapter.

(4) Priority between and among issues and successive issues as to security of the pledge of revenues and lien on the public facilities project involved may be controlled by the resolution authorizing the issuance of

the bonds.

(5) Subject to the provisions of this section pertaining to registration, the bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas.

(6) Without limiting the generality of the foregoing, the resolution may provide for the investment of a major portion of the proceeds of the bonds in consideration of a contract to make payment or payments at least sufficient, alone or with other revenues pledged, to provide for principal, premium, if any, and interest on the bonds, as due.

(b)(1) The resolution authorizing the bonds may provide for the execution by the board of an indenture which defines the rights of the holders and registered owners of the bonds and provides for the appointment of a trustee for the holders and registered owners of the

bonds.

- (2) The indenture may control the priority between and among successive issues and may contain any other terms, covenants, and conditions that are deemed desirable including, without limitation, those pertaining to:
  - (A) The custody and application of proceeds of the bonds;

(B) The maintaining of rates and charges;

(C) The collection and disposition of revenues;

(D) The maintenance of various funds and reserves;

- (E) The nature and extent of the security and pledging of revenues;
- (F) The rights, duties, and obligations of the board and the trustee; and
  - (G) The rights of the holders and registered owners of the bonds.
- (c) The bonds may be sold at public or private sale for such price including, without limitation, sale at a discount, and in such manner as the board may determine by resolution.
- (d)(1) The bonds shall be executed by the manual or facsimile signature of the chairman and by the manual or facsimile signature of the secretary of the board.

(2) The coupons attached to the bonds may be executed by the

facsimile signature of the chairman of the board.

(3) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of the bonds or coupons, their signatures shall nevertheless be valid and sufficient for all purposes.

History. Acts 1975, No. 142, § 9; 1981, No. 528, §§ 5, 6; 1981, No. 703, § 2; 1983, No. 221, § 1; A.S.A. 1947, § 20-1709; Acts 1987, No. 47, § 3.

## 14-137-117. Refunding bonds.

(a) Bonds may be issued for the purpose of refunding any obligations issued under this chapter. Such refunding bonds may be combined with bonds issued under the provisions of § 14-137-116 into a single issue.

(b) When bonds are issued under this section for refunding purposes, the bonds may either be sold or delivered in exchange for the outstanding obligations. If sold, the proceeds may be either applied to the payment of the obligations refunded or deposited in escrow for the

retirement thereof either at maturity or upon any authorized redemption date.

- (c)(1) All bonds issued under this section shall in all respects be authorized, issued, and secured in the manner provided for other bonds issued under this chapter and shall have all the attributes of such bonds.
- (2) The resolution under which the refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the obligations refunded thereby.

**History.** Acts 1975, No. 142, § 11; A.S.A. 1947, § 20-1711.

## 14-137-118. Investment of public funds in bonds.

Any municipality, or any board, commission, or other authority duly established by ordinance of any municipality, or the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any municipality, or the board of trustees of any retirement system created by the General Assembly of the State of Arkansas, may, in its discretion, invest any of its funds not immediately needed for its purposes in bonds issued under the provisions of this chapter. Bonds issued under the provisions of this chapter shall be eligible to secure the deposit of public funds.

**History.** Acts 1975, No. 142, § 16; A.S.A. 1947, § 20-1716.

**Publisher's Notes.** Acts 1977, No. 793, § 11(3), provided that the authority of public retirement systems to invest funds of the systems in public facility board

bonds as authorized in this section shall be construed to authorize the making of investments in these funds and accounts only in accordance with the procedures set forth in §§ 24-3-101 — 24-3-414.

# 14-137-119. Bonds — Tax exemption.

Bonds issued under this chapter and the income therefrom shall be exempt from all state, county, and municipal taxes. This exemption includes income and estate taxes.

**History.** Acts 1975, No. 142, § 15; A.S.A. 1947, § 20-1715.

A.C.R.C. Notes. Language excluding property taxes from the exemption provided by this section was deleted pursuant to Ark. Const. Amend. 57, § 1 and § 26-3-302. Arkansas Const. Amend. 57, § 1 provides that the General Assembly may classify intangible personal property for assessment at lower percentages of value

than other property and may exempt one or more classes of intangible personal property from taxation of intangible personal property on a basis other than ad valorem. Section 26-3-302 exempts all intangible personal property in this state from all ad valorem tax levies of counties, cities, and school districts in the state as of January 1, 1976.

## 14-137-120. Obligations on bonds.

(a) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this chapter, that the bonds are obligations only of the public facilities board, and that in no event shall they constitute an indebtedness for which the faith and credit of the creating municipality or county or any of its revenues are pledged.

(b) No member of the board shall be personally liable on the bonds or for any damages sustained by anyone in connection with any contracts entered into in carrying out the purpose and intent of this chapter

unless he shall have acted with a corrupt intent.

- (c) The principal of and interest on the bonds shall be payable from:
- (1) Revenues derived from the public facilities project acquired, constructed, reconstructed, equipped, extended, or improved, in whole or in part, with the proceeds of the bonds;

(2) Obligations of:

(A) The owners of public facilities projects; or

(B) Any person with whom the proceeds of the bonds, or a portion

thereof, are invested by contract or otherwise;

(3) Any other funds or sources of funds of the board specifically pledged and which are set aside as a special fund or source, other than taxes or assessments for local improvements, for the purpose of paying the principal of and interest on the bonds; or

(4) Any combination of subdivisions (1), (2), and (3) of this subsec-

tion.

(d) The board is authorized to pledge those revenues, obligations, other special funds or sources to pay the principal of and interest on the bonds.

**History.** Acts 1975, No. 142, § 10; **Publisher's Notes.** As to purpose of 1977, No. 446, § 4; A.S.A. 1947, § 20- Acts 1987, No. 47, § ee Publisher's Notes, § 14-137-111.

#### **CASE NOTES**

**Cited:** Cortez v. Independence County, 287 Ark. 279, 698 S.W.2d 291 (1985).

## 14-137-121. Mortgage liens — Enforcement.

(a) The resolution or indenture referred to in § 14-137-116 may, or may not, impose a foreclosable mortgage lien upon or security interest in all or any portion of the lands, buildings, or facilities acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of bonds issued under this chapter, and the nature and extent of the mortgage lien or security interest may be controlled by the resolution or indenture including, without limitation, provisions pertaining to the release of all or part of the lands, buildings, or facilities from the mortgage lien or security interest and the priority of the mortgage lien or security interest in the event of successive bond issues as authorized by § 14-137-116.

(b) Subject to such terms, conditions, and restrictions as may be contained in the resolution or indenture authorizing or securing the bonds, any holder or registered owner of bonds issued under the provisions of this chapter, or a trustee, on behalf of all holders and registered owners, may, either at law or in equity, enforce the mortgage lien or security interest and may, by proper suit, compel the performance of the duties of the members and employees of the issuing board as set forth in this chapter, the ordinance creating the board, and the resolution or indenture authorizing or securing the bonds.

**History.** Acts 1975, No. 142, § 12; A.S.A. 1947, § 20-1712.

## 14-137-122. Receivership upon default on bonds.

(a)(1) In the event of a default in the payment of the principal of or interest on any bonds issued under the provisions of this chapter, any court having jurisdiction may appoint a receiver to take charge of the public facilities project upon or in which there is a mortgage lien or

security interest securing the bonds in default.

(2) The receiver shall have the power and authority to operate and maintain the public facilities project in receivership and to charge and collect payments, fees, rents, and charges sufficient to provide for the payment of any costs of receivership and operating expenses of the project in receivership and to apply the revenues derived from the project in receivership in conformity with this chapter and the resolution or trust indenture securing the bonds in default.

(3) When the default has been cured, the receivership shall be ended

and the project returned to the public facilities board.

(b) The relief provided for in this section shall be construed to be in addition and supplemental to the other remedies provided for in this chapter and the remedies that may be provided for in the resolution or trust indenture authorizing or securing the bonds, and shall be so granted and administered as to accord full recognition to priority rights of bondholders as to the pledge of revenues from and mortgage lien on or security interest in projects as specified in and fixed by the resolution or trust indenture authorizing or securing successive issues of bonds.

**History.** Acts 1975, No. 142, § 13; A.S.A. 1947, § 20-1713.

## 14-137-123. Annual reports.

(a) Within the first ninety (90) days of each calendar year, each public facilities board shall make a written report to the governing body of the municipality or county which created the board concerning its activities for the preceding calendar year.

(b) Each report shall set forth a complete operating and financial

statement covering its operation during the year.

**History.** Acts 1975, No. 142, § 18; A.S.A. 1947, § 20-1718.

## CHAPTER 138

## PUBLIC CORPORATIONS FOR MUNICIPAL FACILITIES

Effective Dates. Acts 1967, No. 409, § 24: Mar. 16, 1967. Emergency clause provided: "It is hereby found and declared that there are inadequate facilities for carrying on necessary governmental functions and duties and there are no available means under existing laws to provide the necessary projects. By reason thereof, the public health, safety and welfare is jeopardized and these conditions can be properly alleviated only by the authorizations set forth in this Act. It is, therefore, declared that an emergency exists and this Act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage and approval."

Acts 1970 (Ex. Sess.), No. 32, § 4: Mar. 13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency

is declared to exist and this Act, being necessary for the preservation of the public peace, health, and safety, shall be in effect from and after its passage and approval."

Acts 1970 (Ex. Sess.), No. 41, § 8: Mar. 13, 1970. Emergency clause provided: "It is hereby found and determined by the General Assembly that additional buildings for public projects are required in order to enable cities, counties, school districts and other public bodies of this State to have adequate and sufficient facilities essential to their operations; that such buildings cannot be provided by existing methods of financing, and that the immediate passage of this Act is necessary to provide broadened authority of public corporations established under Act 409 of 1967, as amended, to enable such corporations to provide buildings required for city, county or other public projects. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

## 14-138-101. Legislative intent.

It is the intent of the General Assembly by the passage of this chapter to authorize in each municipality in this state the incorporation of a public corporation as a political subdivision of the state for the purpose of providing buildings and facilities for the respective purposes of projects enumerated in subdivision (9) of § 14-138-102, and to invest the corporation with all powers that may be necessary to enable it to accomplish such purposes, including the power to lease its properties and to issue interest bearing revenue bonds.

**History.** Acts 1967, No. 409, § 2; 1968 Sess.), No. 41, § 3; A.S.A. 1947, § 19-(1st Ex. Sess.), No. 28, § 2; 1970 (Ex. 5102.

#### 14-138-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Corporation" means a corporation organized pursuant to the provisions of this chapter;

(2) "Board" means the board of directors of the corporation;

(3) "State" means the State of Arkansas;

(4) "Municipality" means that incorporated town, city of the second class, or city of the first class in the state which authorized the organization of the corporation;

(5) "County" means that county in which the certificate of incorpo-

ration of the corporation shall be filed for record;

(6) "United States" means the United States of America or any of its agencies or instrumentalities;

(7) "Governing body" means the council, board of directors, or other like body in which the legislative functions of the municipality are

vested by law;

(8) "Lessee" means the municipality, or the county, or other public body leasing a project from the corporation. "Other public body" as used in this subdivision shall mean any department, agency, subdivision, or instrumentality of the State of Arkansas or the United States, or of any city, county, or school district, a vocational-technical school, or a community junior college district;

(9)(A) "Project" means one (1) or more buildings located or to be located within or near the municipality and designed for use and occupancy by a lessee, as defined in this section, for any one (1) or a

combination of the following public purposes:

- (i) Convention centers;
- (ii) Airport facilities;
- (iii) Transportation facilities;
- (iv) Off-street parking facilities;
- (v) Schools of any and all kinds supported by public funds including, but not limited to, day care, kindergarten, elementary, junior high, senior high, junior college, college, community college, graduate college, vocational-technical schools, and school administration facilities;
- (vi) City halls including administrative offices, police, courts, and jail facilities;
- (vii) Fire stations and substations, and, sewage, garbage, and solid waste disposal facilities;
- (viii) Courthouses and related administrative facilities including, but not limited to, courts and jail facilities;
- (ix) Recreational facilities and community centers including, but not limited to, handicrafts, public gymnasiums and related facilities, swimming pools, meeting rooms, and dining facilities;
  - (x) Office space for state and federal agencies;
  - (xi) Both school and public stadiums;
- (xii) Offices and administrative facilities including garages and necessary parking facilities for agencies of cities, counties, or other public bodies;
  - (xiii) Libraries and branch libraries;
- (xiv) Hospitals and other medical facilities, and nursing homes and similar facilities;
  - (xv) Garages including parking garages and storage buildings;
- (xvi) Any combination of the above, or any type of facilities customarily constructed by the public for public use and benefit;
- (B) The above projects may include any lands, or interest therein, deemed by the board to be desirable in connection therewith, and necessary equipment for the proper functioning and operation of the buildings or facilities involved.
- (10) "Indenture" means a mortgage, an indenture of mortgage, deed of trust, trust agreement, or trust indenture executed by the corporation as security for any bonds.

**History.** Acts 1967, No. 409, § 1; 1968 Sess.), No. 41, §§ 1, 2; A.S.A. 1947, § 19-(1st Ex. Sess.), No. 28, § 1; 1970 (Ex. 5101.

## 14-138-103. Construction.

- (a) This chapter shall be liberally construed in conformity with its intent.
- (b) All acts and activities of the corporation performed pursuant to the authority of this chapter are legislatively determined and declared to be essential governmental functions. In this regard, it is determined and declared that this chapter is the sole authority necessary for the

performance of the acts authorized by this chapter including, without limitation, the issuance of bonds.

**History.** Acts 1967, No. 409, §§ 2, 22; Sess.), No. 41, § 3; A.S.A. 1947, §§ 19-1968 (1st Ex. Sess.), No. 28, § 2; 1970 (Ex. 5102, 19-5122.

# 14-138-104. Authority generally.

There is conferred upon the corporation the authority to take such action and to do, or cause to be done, such things as shall be necessary or desirable to accomplish and implement the purposes and intent of this chapter according to the import of this chapter.

**History.** Acts 1967, No. 409, § 22; A.S.A. 1947, § 19-5122.

## 14-138-105. Authority and procedure to incorporate.

(a) Whenever any number of natural persons, not less than three (3), shall file with the governing body an application in writing for authority to incorporate a public corporation under the provisions of this chapter, if it shall be made to appear to the governing body that each of the persons is a duly qualified elector of the municipality and if the governing body shall duly adopt a resolution wherein it shall be declared that it will be wise, expedient, and necessary that such a corporation be formed and that the persons filing the application shall be authorized to proceed to form such a corporation, then the persons shall become the incorporators of and shall proceed to incorporate the corporation in the manner provided in this chapter.

(b) No corporation shall be formed under this chapter unless the application provided for in this section shall be made and unless the

resolution provided for in this section shall be adopted.

**History.** Acts 1967, No. 409, § 3; A.S.A. 1947, § 19-5103.

# 14-138-106. Certificate of incorporation.

(a) The certificate of incorporation of the corporation shall state:

(1) The names of the persons forming the corporation, together with the residence of each thereof, and a statement that each of them is a duly qualified elector of the municipality;

(2) The name of the corporation, which shall be "The Public Building Authority of the City or Town of ....."; or some other name of

similar import;

(3) The location of its principal office, which shall be in the municipality; the number of directors, which number shall be three (3) or a

multiple of three (3); and

(4) Any other matters relating to the corporation that the incorporators may choose to insert and that is not inconsistent with this chapter or with the laws of the state.

(b) The form and contents of the certificate of incorporation must be submitted to the governing body for its approval, which shall be evidenced by a resolution duly entered upon the minutes of the governing body.

**History.** Acts 1967, No. 409, § 4; A.S.A. 1947, § 19-5104.

## 14-138-107. Execution and recording of certificate.

(a) The certificate of incorporation shall be signed and acknowledged by the incorporators and shall have attached thereto a certified copy of the resolution provided for in § 14-138-106 and a certificate by the Secretary of State that the name proposed for the corporation is not identical with that of any other corporation in the state, or so nearly similar thereto as to lead to confusion and uncertainty.

(b)(1) The certificate of incorporation, together with the documents required by § 14-138-106 to be attached thereto, shall be filed in the office of the county clerk of the county in which the municipality is located, who shall forthwith receive and record it. A copy of the

certificate shall be filed in the office of the Secretary of State.

(2) When the certificate of incorporation and attached documents have been so filed, the corporation referred to therein shall come into existence and shall constitute a body corporate and politic and a political subdivision of the state under the name set forth in the certificate of incorporation, whereupon the corporation shall be vested with the rights and powers granted in this chapter.

**History.** Acts 1967, No. 409, § 5; A.S.A. 1947, § 19-5105.

# 14-138-108. Board of directors.

- (a) The corporation shall have a board of directors composed of the number of directors provided in the certificate of incorporation. All powers of the corporation shall be exercised by the board or pursuant to its authorization.
- (b)(1) The directors shall be qualified electors of the municipality and shall be elected by the governing body for staggered terms of office as follows:
  - (A) The first term of one-third  $(\frac{1}{3})$  of the directors shall be two (2) years;
    - (B) Another one-third (1/3) shall be elected for four (4) years; and (C) The remaining one-third (1/3) shall be elected for six (6) years.
  - (2) Thereafter, the term of office of each director shall be six (6) years.
- (c) If any director resigns, dies, becomes incapable of acting as a director, or ceases to be a qualified elector of the municipality, the board shall nominate one (1) or more qualified electors, and the governing body shall elect from those nominated a successor to serve for the unexpired period of his term.

- (d) Directors shall be eligible for reelection to succeed themselves in office.
- (e) In the case of a vacancy by virtue of the expiration of a term, the board shall nominate one (1) or more qualified electors. The governing body shall then elect from those nominated the person to serve for a regular term in the position involved.

(f)(1) A majority of the members of the board shall constitute a

quorum for the transaction of business.

- (2) No vacancy in the membership of the board shall impair the right of a quorum to exercise all the powers and duties of the corporation.
- (g) The members of the board and the officers of the corporation shall serve without compensation, except that they may be reimbursed for actual expenses incurred in and about the performance of their duties.

(h)(1) All proceedings of the board shall be reduced to writing by the

secretary of the corporation and recorded in a well bound book.

(2) Copies of such proceedings, when certified by the secretary of the corporation under its seal, shall be received in all courts as evidence of the matters and things certified.

**History.** Acts 1967, No. 409, § 6; A.S.A. 1947, § 19-5106.

#### 14-138-109. Officers.

(a)(1) The officers of the corporation shall consist of a chairman, vice chairman, a secretary, a treasurer, and such other officers as the board shall deem necessary to accomplish the purposes for which the corporation was organized.

(2) The offices of secretary and treasurer may, but need not, be held

by the same person.

(b)(1) The chairman and vice chairman of the corporation shall be

elected by the board from its membership.

(2) The secretary, the treasurer, and any other officers of the corporation, who may, but need not, be members of the board, shall also be elected by the board.

**History.** Acts 1967, No. 409, § 7; A.S.A. 1947, § 19-5107.

# 14-138-110. Powers generally.

The corporation shall have the following powers, together with all powers incidental thereto or necessary to the discharge thereof:

(1) To have succession by its corporate name until dissolved as

provided in this chapter;

(2) To sue and be sued and to prosecute and defend suits in any court having jurisdiction of the subject matter and of the parties;

(3) To make use of a corporate seal and to alter it at pleasure;

(4) To adopt and alter bylaws for the regulation and conduct of its affairs and business;

(5) To acquire, whether by purchase, gift, lease, devise, or otherwise, property of every description which the board may deem necessary to the acquisition, construction, equipment, improvement, enlargement, operation, or maintenance of a project, and to hold title thereto;

(6) To construct, enlarge, equip, improve, maintain, and operate one

(1) or more projects;

(7) To borrow money for any of its corporate purposes;(8) To sell and issue its interest-bearing revenue bonds;

(9) To sell and issue refunding revenue bonds;

(10) To secure any of its bonds by pledge and indenture as provided in this chapter;

(11) To appoint, employ, and compensate such agents, architects, engineers, attorneys, and other persons and employees as the business of the corporation may require;

(12) To provide for such insurance as the board may deem advisable;

(13) To invest in obligations that are direct or guaranteed obligations of the United States of America, or other securities in which public funds may be invested under the laws of this state, any of its funds that the board may determine are not presently needed for its corporate purposes;

(14) To contract, lease, and make lease agreements respecting its

properties, or any part thereof; and

(15) To sell, convey, or otherwise dispose of any of its properties that may have become obsolete or worn out, or that may no longer be needed or useful in connection with, or in the operation of, any project.

**History.** Acts 1967, No. 409, § 8; A.S.A. 1947, § 19-5108.

## 14-138-111. Lease agreements.

(a)(1) The corporation and the lessee involved are respectively authorized to enter into with each other one (1) or more lease agreements whereunder a project shall be leased by the corporation to the lessee.

(2) Any lease agreement shall provide for subleasing of portions of the project under and pursuant to the provisions of law governing the

leasing of public property to private persons.

(3) In the case of municipalities, counties, or other public bodies, the term of the lease shall not be longer than the then-current fiscal year of the municipality, county, or other public body. However, any such lease agreement may contain a grant to the municipality, county, or other public body of successive options of renewing the lease agreement on the terms specified therein for any subsequent fiscal year or years of the municipality, county, or other public body.

(4) The lease agreement may contain appropriate provisions as to the method by which the municipality, county, or other public body may, at its election, exercise such of the options of renewal as its governing body may elect, on the terms provided in this section such other covenants and provisions as shall not be inconsistent with this chapter, and as the corporation and the municipality, county, or other public

body may agree.

(b)(1) The rental for each fiscal year during which the lease agreement shall be in effect shall be due in advance on the first day of the fiscal year. The rental for the fiscal year shall be payable and any such covenant on the part of the municipality, county, or other public body shall be performed solely out of the current revenues of the municipality, county, or other public body for the fiscal year.

(2) The state shall not in any manner be liable for the performance of

any obligation or agreement contained in the lease agreement.

(3) The rental payable and the covenants to be performed by the lessees under the provisions of the lease agreement shall never create an indebtedness of the lessees within the meaning of any applicable limitation in the Constitution of the state, including particularly Arkansas Constitution, Amendment 10.

(4) It is declared that it is an essential governmental function of the lessee to secure and supply reasonable and adequate project facilities for the performance of its public functions and duties, and the rentals payable by the lessee for such purpose are and shall constitute a

necessary governmental operating expense of the lessee.

(5) If there is any default in the payment of any rental required to be paid or in the performance of any covenant required to be performed by the lessee under the provisions of any such lease agreement while such lease agreement shall be in effect, the corporation and any pledgee of the lease agreement or rentals thereunder may, by any appropriate proceedings at law or in equity, enforce and compel payment of such rental and performance of such covenant.

(c) Should any usable space in any project leased to a lessee become vacant after acquisition or construction thereof by the corporation, then neither the lessee, nor any officer or agency thereof, shall thereafter enter into any lease or rental agreement for additional space or renew any existing lease or rental agreement for such space, nor construct any facilities duplicating such vacant space in the project until after all

vacant space in the project shall have been filled.

History. Acts 1967, No. 409, § 9; 1970 (Ex. Sess.), No. 41, § 4; A.S.A. 1947, § 19-5109.

## 14-138-112. Conveyance of property by lessee.

Any lessee is authorized to convey to the corporation, with or without the payment of monetary consideration therefor, any property that may be owned by the lessee, whether or not the property is necessary for the conduct of the governmental or other public functions of the lessee, if the conveyance has been authorized by a resolution duly adopted by the governing body prior to the conveyance.

History. Acts 1967, No. 409, § 20; A.S.A. 1947, § 19-5120.

## 14-138-113. Tax exemption of projects.

Each project, and the income from all leases made with respect thereto, are determined and declared by the General Assembly to be public property used exclusively for a public purpose and shall be exempt from ad valorem taxation by all taxing authorities.

History. Acts 1967, No. 409, § 15; A.S.A. 1947, § 19-5115.

#### 14-138-114. Issuance of bonds.

(a)(1) The corporation is authorized at any time and from time to time to issue its interest-bearing revenue bonds for the purpose of acquiring, constructing, improving, enlarging, completing, and equipping one (1) or more projects.

(2) The principal of and the interest on any bonds shall be payable solely out of the revenues derived from the projects with respect to

which the bonds are issued.

(3) None of the bonds of the corporation shall ever constitute an obligation or debt of the state or the lessee, or a charge against the credit or taxing powers of the state or the lessee.

(b) As the corporation shall determine, bonds of the corporation may:

(1) Be issued at any time and from time to time:

- (2) Be coupon bonds, payable to bearer, or may be registrable as to principal and interest without coupons, and may be made exchangeable for bonds of another denomination, which bonds of another denomination may in turn be either coupon bonds, bonds payable to bearer or bonds registrable as to principal only with coupons, or bonds registrable as to both principal and interest without coupons:
  - (3) Be in such form and denominations:

(4) Have such date or dates:

- (5) Mature at such time or times and in such amount or amounts, provided that no bonds may mature more than forty (40) years from date:
  - (6) Bear interest payable at such times and at such rate or rates;
- (7) Be payable at such place or places within or without the State of Arkansas;
- (8) Be subject to such terms of redemption in advance of maturity at such prices, including such premiums; and

(9) Contain such other terms and provisions.

(c)(1) Bonds of the corporation may be sold at either public or private sale in such manner and from time to time as may be determined by the board to be most advantageous.

(2) The corporation may pay all expenses, premiums, and commissions that the board may deem necessary or advantageous in connec-

tion with the authorization, sale, and issuance of its bonds.

§ 19-9-101.

(d) All bonds shall contain a recital that they are issued pursuant to the provisions of this chapter which recital shall be conclusive that they have been duly authorized pursuant to the provisions of this chapter.

(e) All bonds issued under the provisions of this chapter shall be and are declared to be negotiable instruments within the meaning of the negotiable instruments law of the state.

History. Acts 1967, No. 409, § 10; 1970

(Ex. Sess.), No. 32, § 1; 1981, No. 425, § 14-164-301 et seq.
§ 35; A.S.A. 1947, § 19-5110.

Cross References. Form of bonds,

#### 14-138-115. Notice of bond resolution.

(b) Any action or proceeding in any court to set aside or question the proceeding for the issuance of the bonds referred to in the notice, or to contest the validity of any such bonds or the validity of the pledge and indenture made therefor, must be commenced within twenty (20) days after the first publication of the notice. After the expiration of this period, no right of action or defense founded upon the validity of the proceedings or of the bonds, or the pledge, or of the indenture shall be asserted, nor shall the validity of the proceedings, bonds, pledge, or indenture be open to question in any court on any ground whatsoever

except in an action commenced within such period.

**History.** Acts 1967, No. 409, § 19; A.S.A. 1947, § 19-5119.

## 14-138-116. Execution of bonds.

(a) Bonds shall be executed by the manual or facsimile signature of the chairman of the corporation and by the manual signature of the secretary of the corporation.

(b) Coupons attached to the bonds shall be executed by the facsimile

signature of the chairman of the corporation.

(c) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officer before the delivery of the bonds or coupons, their signatures shall nevertheless be valid and sufficient for all purposes.

(d) The bonds shall be sealed with the seal of the corporation.

**History.** Acts 1967, No. 409, § 11; A.S.A. 1947, § 19-1511.

## 14-138-117. Security for bonds.

(a) The principal of, and interest on, the bonds shall be secured by a pledge of the revenues out of which the bonds shall be made payable and by a pledge of the lease agreement covering the project from which revenues so pledged shall be derived and of the rental therefrom and may be secured by an indenture covering the project.

(b) The trustee under any indenture may be a trust company or bank having trust powers, whether located within or without the state.

(c)(1) The indenture may contain any agreements and provisions customarily contained in instruments securing evidences of indebtedness including, without limiting the generality of the foregoing, provisions respecting:

(A) The nature and extent of the security;

(B) The collection, segregation, and application of the rental from any project covered by the indenture;

(C) Terms to be incorporated in the lease agreement respecting the

project;

(D) Covenants to always operate the project as a revenue-producing undertaking and to charge and collect, including the obligation to increase from time to time, sufficient rentals to maintain income at required levels;

(E) The maintenance and insurance of the project;

(F) The creation and maintenance of reserve and other special

funds; and

(G) The rights and remedies available in the event of default to the holders of the bonds or the trustees under the indenture, all as the board shall deem advisable and as shall not be in conflict with the provisions of this chapter.

(2) In making such agreements or provisions, the corporation shall not have the power to obligate itself except with respect to projects and

the application of the revenue therefrom.

(d)(1) If there is any default by the corporation in payment of the principal of or the interest on the bonds or in any of the agreements on the part of the corporation that may properly be included in any indenture securing the bonds, the bondholders or the trustee under any indenture, as authorized in such indenture, may either in law or in equity, by suit, action, mandamus, or other proceeding, enforce payment of the principal or interest and compel performance of all duties of the board and officers of the corporation, and shall be entitled as a

matter of right and regardless of the sufficiency of any such security to the appointment of a receiver in equity with all the powers of such receiver for the operation and maintenance of the project covered by such indenture and the collection, segregation, and applications of rents therefrom.

(2) Any such indenture shall not be subject to foreclosure and shall not be construed so as to authorize the sale of any project covered thereby, or any part thereof, in satisfaction of the bonds secured thereby.

(e) The indenture may contain provisions:

(1) Regarding the rights and remedies of any trustee thereunder and

the holders of the bonds and the coupons; and

(2) Restricting the individual rights of action of the holders of the bonds and coupons.

History. Acts 1967, No. 409, § 12; A.S.A. 1947, § 19-5112.

## 14-138-118. Eligibility of bonds as investment.

(a) Revenue bonds issued under the authority of this chapter are made securities in which insurance companies, trust companies, banks, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. The bonds are made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the state for any purpose for which the deposit of bonds or obligations is authorized by law.

(b) Any municipality or county or any board, commission, or other authority duly established by any municipality or county, or the boards of trustees, respectively, of any retirement fund or retirement system created by or pursuant to authority conferred by the General Assembly of the State of Arkansas may, in its discretion, invest any of its funds not immediately needed for its purposes in bonds issued under the authority of this chapter, and bonds issued under the authority of this

chapter shall be eligible to secure the deposit of public funds.

History. Acts 1967, No. 409, § 18; A.S.A. 1947, § 19-5118.

## 14-138-119. Bonds — Tax exemption.

The principal of and interest on bonds issued under the authority of this chapter shall be exempt from all state, county, and municipal taxes. This exemption shall include income, inheritance, and estate taxes.

History. Acts 1967, No. 409, § 17; A.S.A. 1947, § 19-5117.

A.C.R.C. Notes. Language excluding property taxes from the exemption provided by this section was deleted pursuant to Ark. Const. Amend. 57, § 1 and § 26-3-302. Arkansas. Const. Amend. 57, § 1 provides that the General Assembly may classify intangible personal property for assessment at lower percentages of value than other property and may exempt one or more classes of intangible personal property from taxation, or may provide for the taxation of intangible personal property on a basis other than ad valorem. Section 26-3-302 exempts all intangible personal property in this state from all ad valorem tax levies of counties, cities, and school districts in the state as of January 1, 1976.

## 14-138-120. Proceeds from sale of bonds.

(a) The proceeds derived from all of the bonds other than refunding bonds may be used only to pay the costs of acquiring, constructing, improving, enlarging, and equipping the project with respect to which they were issued, as may be specified in the proceedings in which the bonds are authorized to be issued and all costs incidental thereto including, without limitation:

(1) The costs of any land forming a part of the project;

(2) The costs of the labor, materials, and supplies used in any construction, improvement, and enlargement, including architect's and engineer's fees and the cost of preparing contract documents and advertising for bids;

(3) The purchase price of and the cost of installing equipment for the

project

(4) The cost of landscaping the lands forming a part of the project and of constructing and installing roads, sidewalks, curbs, gutters, utilities, and parking places in connection therewith;

(5) Legal, fiscal, and recording fees and expenses incurred in connection with the authorization, sale, and issuance of the bonds issued in

connection with the project;

(6) Interest on bonds for a reasonable period prior to, during, and after the time required for such construction and equipment; and

(7) The amount necessary to fund a debt service reserve of not to exceed one (1) year's principal and interest requirements on the bonds.

(b) Nothing in this section shall be construed to authorize the use of proceeds derived from the sale of such bonds to purchase, condemn, or otherwise acquire a utility plant, property, or facilities owned or operated by any regulated utility.

(c) If any of the proceeds derived from the sale of bonds remains undisbursed after completion of the project and the making of all such expenditures, the balance shall be used for the redemption of bonds of

the same issue.

**History.** Acts 1967, No. 409, § 13; 1970 (Ex. Sess.), No. 41; § 5; A.S.A. 1947, § 19-5113.

## 14-138-121. Refunding bonds.

(a) The corporation may at any time and from time to time issue refunding bonds for the purpose of refunding the principal of and interest on any bonds of the corporation theretofore issued under this chapter and then outstanding, whether or not the principal and interest shall have matured at the time of the refunding under this chapter and for the payment of any expenses incurred in connection with the refunding and any premium necessary to be paid in order to redeem or retire the bonds to be refunded.

(b) The proceeds derived from the sale of any refunding bonds shall be used only for the purposes for which the refunding bonds were

authorized to be issued.

(c) Any such refunding may be effected either by sale of the refunding bonds and the application of the proceeds thereof by immediate application or by escrow deposit with the right to invest moneys in the escrow deposit until needed for the redemption or by exchange of the refunding bonds for the bonds or interest coupons to be refunded thereby. However, the holders of any bonds or coupons so to be refunded shall not be compelled without their consent to surrender their bonds or coupons for payment or exchange prior to the date on which they may be paid or redeemed by the corporation under their respective provisions.

(d) Any refunding bonds of the corporation shall be payable solely from the revenues out of which the bonds or coupons to be refunded

were payable.

(e) All provisions of this chapter pertaining to bonds of the corporation that are not inconsistent with the provisions of this section shall, to the extent applicable, also apply to refunding bonds issued by the corporation.

**History.** Acts 1967, No. 409, § 14; A.S.A. 1947, § 19-5114.

## 14-138-122. Remedies on default.

(a) If there is any default in the payment of the principal of or interest on any bonds issued under this chapter, then the holder of any of the bonds and of any of the interest coupons applicable thereto and the trustee under any indenture, or any one (1) or more of them:

(1) May either at law or in equity, by suit, action, mandamus, or other proceeding, compel performance of all duties of the officers and directors of the corporation with respect to the use of funds for the payment of the bonds and for the performance of the agreements of the corporation contained in the proceedings under which they were issued, and compel performance of the duties of all officials of the city with respect to payment of the rentals provided to be paid under any lease made by the municipality pursuant to the provisions of this chapter and pledged as security for the bonds; and

- (2) Regardless of the sufficiency of the security for the bonds and as a matter of right, shall be entitled to the appointment of a receiver to administer and operate the project out of the revenues from which the bonds issued with respect thereto are payable, with power to make leases with any public or private lessee including, without limitation, leases with a term running to the last maturity of the bonds, and fix and collect rents sufficient to provide for the payment of the principal of and interest on the bonds and any other obligations outstanding against the project or the revenues therefrom and for the payment of the expenses of operating and maintaining the project, and with power to apply the income therefrom in accordance with the provisions of the proceedings under which the bonds were authorized to be issued.
- (b) The remedies specified in this section shall be cumulative to all other remedies which may otherwise be available for the benefit of the holders of the bonds and the coupons applicable thereto.

**History.** Acts 1967, No. 409, § 16; A.S.A. 1947, § 19-5116.

#### 14-138-123. Dissolution.

- (a) At any time when the corporation does not have any bonds outstanding, the board may adopt a resolution, which shall be duly entered upon its minutes, declaring that the corporation shall be dissolved. Upon the filing for record of a certified copy of the resolution in the office of the county clerk of the county in which the municipality is located, the corporation shall thereupon stand dissolved. At the time of its dissolution, the title to all its property shall thereupon vest in the lessee.
- (b) When the principal of and the interest on all bonds payable, in whole or in part, from the revenues derived from any project shall have been paid in full, title to that project shall thereupon vest in the lessee, but such vesting of title in the lessee shall not affect the title of the corporation to any other project, the revenues from which are pledged for the payment of any other bonds then outstanding.
- (c) The formation and dissolution of one (1) or more corporations under the provisions of this chapter shall not prevent the subsequent formation under this chapter of other corporations in the same municipality.

**History.** Acts 1967, No. 409 § 21; A.S.A. 1947, § 19-5121.

## **CHAPTER 139**

## MUNICIPAL EXHIBITION GROUNDS AND BUILDINGS

SECTION. 14-139-101. Definitions. 14-139-102. Construction. SECTION.

14-139-103. Authority generally. 14-139-104. Right of eminent domain.

SECTION.

14-139-105. Issuance of revenue bonds.

14-139-106. Notice and hearing.

14-139-107. Terms of authorizing ordinance.

14-139-108. Sale of bonds.

14-139-109. Bonds to be secured.

14-139-110. Statutory mortgage lien.

SECTION.

14-139-111. Rents or charges - Surplus.

14-139-112. Funds custodian and accounts.

14-139-113. Payment of bonds.

14-139-114. Obligations payable solely from bond fund.

14-139-115. Bonds — Tax exemption.

Effective Dates. Acts 1938 (Ex. Sess.), No. 17, § 18: approved Apr. 1, 1938. Emergency clause provided: "Whereas, there are various communities in this State which are seriously in need of exhibition grounds for the purpose of exhibiting livestock, so as to encourage and foster livestock raising in this State, the absence of such improvements resulting in loss of revenues to the cities and to the State, which condition menaces the public health and safety; and

"Whereas, the passage of this act would create a means of immediately financing such Exhibition Grounds and Buildings through emergency Government lending agencies, which is not available under

existing laws; and

"Whereas, the immediate construction of such Exhibition Grounds and Buildings (which can be accomplished under this act with the aid of existing Government lending agencies) will not only encourage and foster the raising of livestock and increase private and public revenues in this State, but would give employment to numerous citizens, thereby minimizing in some degree the prevailing conditions of unemployment; and

"Whereas, this act provides a method whereby such Exhibition Grounds and Buildings can be acquired by Municipalities;

"Therefore, it is hereby declared that an emergency exists, and that this act is necessary for the immediate preservation of the public peace, health and safety, and this Act will take effect, and be in force,

from and after its passage."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

#### RESEARCH REFERENCES

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., §§ 541-543.

Ark. L. Rev. Comment, Municipal

Bonds and Amendment 62: Clearing Up a Serbonian Bog, 39 Ark. L. Rev. 499.

## 14-139-101. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Exhibition grounds and buildings" means the exhibition grounds and buildings, in its entirety or any integral part thereof, including all improvements erected on the land used or useful for the purposes of exhibiting livestock;

(2) "Municipality" means any city of the first or second class or incorporated town in the State of Arkansas;

(3) "Legislative body" means the mayor and council of any city or

town.

**History.** Acts 1938 (Ex. Sess.), No. 17, § 2; A.S.A. 1947, § 19-2902.

#### 14-139-102. Construction.

(a) This chapter shall be construed as cumulative authority for the acquisition, purchase, and construction of the grounds and buildings and betterments and improvements thereon for use in the exhibition of livestock and shall not be construed to repeal any existing laws with respect to it.

(b) This chapter, being necessary for the public health, safety, and welfare, shall be liberally construed to effectuate the purposes of it.

**History.** Acts 1938 (Ex. Sess.), No. 17, §§ 2, 12; A.S.A. 1947, §§ 19-2902, 19-2912.

## 14-139-103. Authority generally.

(a) Any city or incorporated town in the State of Arkansas may acquire, purchase, or construct exhibition grounds and buildings for the

purpose of exhibiting livestock, as provided in this chapter.

(b) This chapter shall, without reference to any other statute, be deemed full authority for the construction, acquisition, improvement, erection, maintenance, operation, and repair of exhibition grounds and buildings for the exhibition of livestock as provided for in this chapter and for the issuance and sale of the bonds authorized by this chapter.

(c) This chapter shall be construed as an additional and alternative method therefor and for the financing thereof. No petition or election or other or further proceeding in respect to the construction or acquisition of the exhibition grounds and buildings or to the issuance or sale of bonds under this chapter and no publication of any resolution, ordinance, notice, or proceeding relating to such construction or acquisition or to the issuance or sale of such bonds shall be required except such as are prescribed by this chapter, any provisions of other statutes of the state to the contrary notwithstanding.

**History.** Acts 1938 (Ex. Sess.), No. 17, §§ 1, 11; A.S.A. 1947, §§ 19-2901, 19-2911.

Cross References. Exhibitions, gen-

eral authority to license, etc., § 14-54-1405.

Local government reserve funds, § 14-73-101 et seq.

#### 14-139-104. Right of eminent domain.

For the purpose of acquiring any exhibition grounds and buildings to be used in connection with the exhibition of livestock under the provisions of this chapter, or for the purpose of acquiring any property necessary thereof, the municipality shall have the right of eminent domain as is provided in §§ 18-15-301 — 18-15-303 and any acts amendatory or supplemental to it.

**History.** Acts 1938 (Ex. Sess.), No. 17, § 9; A.S.A. 1947, § 19-2909.

#### 14-139-105. Issuance of revenue bonds.

(a) Whenever the legislative body of any municipality shall determine to acquire, purchase, and construct exhibition grounds and buildings under the provisions of this chapter, it shall cause an estimate to be made of the cost thereof and by ordinance shall provide for the issuance of revenue bonds under the provisions of this chapter.

(b) The ordinance shall set forth:

(1) A brief description of the contemplated improvement;

(2) The estimated cost thereof;

(3) The amount, rate of interest, and time and place of payment; and

(4) Other details in connection with the issuance of the bonds.

(c) The bonds shall bear interest at such rate or rates, payable semiannually, and shall be payable at such times and places, not exceeding twenty (20) years from their dates, as shall be prescribed in the ordinance providing for their issuance.

(d) The ordinance shall also:

(1) Declare that a statutory mortgage lien shall exist upon the property so to be acquired or constructed;

(2) Fix the rents or charges to be collected prior to the payment of all

of the bonds; and

(3) Pledge the revenues derived from the exhibition grounds and buildings for the purpose of paying the bonds and interest thereon.

(e) The pledge shall definitely fix and determine the amount of revenue which shall be necessary to be set apart and applied to the payment of the principal of, and interest on, the bonds and the proportion of the balance of the revenues and income which are to be set aside as a proper and adequate depreciation account, and the remainder shall be set aside for the reasonable and proper operation thereof.

(f) The rents or charges from the exhibition grounds and buildings

shall be sufficient to provide for:

- (1) The payment of interest upon all bonds and to create a sinking fund to pay the principal thereof as and when the bonds shall become due:
  - (2) The operation and maintenance of the project; and

(3) An adequate depreciation fund.

**History.** Acts 1938 (Ex. Sess.); No. 17, Local Government Bond Act of 1985, § 3; 1981, No. 425, § 39; A.S.A. 1947, § 14-164-301 et seq.

§ 19-2903.

**Cross References.** Form of bonds, § 19-9-101.

#### RESEARCH REFERENCES

Ark. L. Rev. Municipal Improvement Bonds in Arkansas, 8 Ark. L. Rev. 146.

# 14-139-106. Notice and hearing.

(a) After the ordinance shall have been adopted, it shall be published one (1) time in a newspaper published in the municipality; or if there is no newspaper so published, then the ordinance shall be posted in at least three (3) public places therein, with a notice to all persons concerned stating that:

(1) The ordinance has been adopted;

(2) The municipality contemplates the issuance of the bonds de-

scribed in this ordinance; and

(3) Any person interested may appear before the governing body, upon a certain date which shall not be less than ten (10) days subsequent to the publication or posting of the ordinance and notice, and present protests.

(b) At the hearing, all objections and suggestions shall be heard, and the legislative body shall take such action as it shall deem proper in the

premises.

**History.** Acts 1938 (Ex. Sess.), No. 17, § 4; A.S.A. 1947, § 19-2904.

# 14-139-107. Terms of authorizing ordinance.

(a) The ordinance authorizing the issuance of the revenue bonds may contain provisions for the acceleration of the maturities of all unmatured bonds in the event of default in the payment of any principal or interest maturing under the bond issue, or upon failure to meet any sinking fund requirements, or in any other event stipulated in the ordinance; and such provisions will be binding.

(b) The priorities as between successive issues of revenue bonds may

also be controlled by the provisions of the ordinance.

(c) The ordinance may also, if deemed desirable, provide for:

(1) The execution, contemporaneously with the execution of bonds, by the municipality of an indenture defining the right of the bondholders' interests;

(2) Appointing a trustee for the bondholders, which trustee may be a domestic or foreign corporation;

(3) Vesting in the trustee, to such extent as is deemed advisable, all rights of action under the bonds;

(4) The priority of lien as between successive bond issues;

(5) The acceleration of bond maturities;

(6) Any covenants on the part of the municipality relating to the construction or acquisition of the project, or the application or safeguarding of the proceeds of the bonds, or other covenants intended for the protection of the bondholders; and

(7) Any other provisions, whether similar or dissimilar to the foregoing, which are consistent with the terms of this chapter and which

may be deemed desirable.

**History.** Acts 1938 (Ex. Sess.), No. 17, § 15; A.S.A. 1947, § 19-2914.

#### 14-139-108. Sale of bonds.

(a) Bonds provided for in this chapter shall be issued in such amounts as may be necessary to provide sufficient funds to pay all costs of construction or acquisition, including engineering, legal, and other expenses, together with interest to a date six (6) months subsequent to

the estimated date of completion.

(b) Bonds issued under the provisions of this chapter are declared to be negotiable instruments. They shall be executed by the presiding officer and clerk or recorder of the municipality and be sealed with the corporate seal of the municipality. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before delivery of the bonds, their signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until the delivery.

(c) The bonds may be sold at not less than ninety cents (90¢) on the dollar, and the proceeds derived therefrom shall be used exclusively for the purposes for which the bonds are issued. They may be sold at one (1)

time or in parcels as funds are needed.

**History.** Acts 1938 (Ex. Sess.), No. 17, § 5; A.S.A. 1947, § 19-2905.

#### 14-139-109. Bonds to be secured.

All bonds of the entire issue, issued under the provisions of this chapter, shall be secured ratably and equally by the revenues of the entire and aggregate works financed by the bond issue.

**History.** Acts 1938 (Ex. Sess.), No. 17, § 14; A.S.A. 1947, § 19-2913.

# 14-139-110. Statutory mortgage lien.

(a)(1) There shall be a statutory mortgage lien upon the exhibition grounds and buildings acquired or constructed from the proceeds of bonds authorized by this chapter to be issued, which shall exist in favor of the holder of the bonds and each of them, and to and in favor of the holder of the coupons attached to the bonds.

- (2) The exhibition grounds and buildings shall remain subject to the statutory mortgage lien until payment in full of the principal and interest of the bonds.
- (b) Subject to such restrictions as may be contained in the indenture authorized in this chapter, any holder of bonds issued under the provisions of this chapter, or of any coupons representing interest accrued thereon, may, either at law or in equity, enforce the statutory mortgage lien conferred by this section and may, by proper suit, compel the performance of the duties of the officials of the issuing municipality set forth in this chapter.
- (c) If there is default in the payment of the principal of or interest upon any of the bonds, any court having jurisdiction in any proper action may appoint a receiver to administer the exhibition grounds and buildings on behalf of the municipality, with power to charge and collect rents or charges sufficient to provide for the payment of the bonds and interest thereon, and for the payment of the operating expense, and to apply the income and revenues in conformity with this chapter and the ordinance providing for the issuance of the bonds.

**History.** Acts 1938 (Ex. Sess.), No. 17, § 7; A.S.A. 1947, § 19-2907.

# 14-139-111. Rents or charges — Surplus.

(a) Rents or charges for the use of the exhibition grounds and buildings precedent to the issuance of bonds shall not be reduced until all of the bonds shall have been fully paid and may, whenever necessary, be increased in amounts sufficient to provide for the payment of the bonds, both principal and interest, and to provide proper funds for the depreciation account and operation and maintenance charges.

(b)(1) If any surplus shall be accumulated in the operating and maintenance fund which shall be in excess of the cost of maintaining and operating the project during the remainder of the fiscal year then-current, and the cost of maintaining and operating the project during the fiscal year then-ensuing, then any excess may be transferred by the legislative body to either the depreciation account or to the bond and interest redemption account, as the legislative body may designate.

(2) If any surplus shall be accumulated in the depreciation account over and above that which the legislative body shall find may be necessary for the probable replacement which may be needed during the then-present fiscal year and the ensuing fiscal year, the excess may be transferred to the bond and interest redemption account.

(3) If surplus shall exist in the bonds and interest redemption account, it shall be applied insofar as possible in the purchase or retirement of outstanding revenue bonds payable from the account. For that purpose, the legislative body is authorized to purchase bonds not due in the open market at not more than the fair market value thereof.

**History.** Acts 1938 (Ex. Sess.), No. 17, § 8; A.S.A. 1947, § 19-2908.

#### 14-139-112. Funds custodian and accounts.

(a)(1) Any municipality issuing revenue bonds under the provisions of this chapter shall install and maintain a proper system of accounts, showing the amount of revenue received and the application of it.

(2) At least once a year, the municipality shall cause the accounts to be properly audited by a competent auditor, and the report of the audit shall be open for inspection at all proper times to any taxpayer or any holder of bonds issued under the provisions of this chapter, or anyone

acting for and on behalf of such taxpayer or bondholder.

(b)(1) The treasurer of the municipality shall be custodian of the funds derived from income received from projects acquired or constructed, either in whole or in part, under the provisions of this chapter and shall give proper bond for the faithful discharge of his duties as such custodian. The bond shall be fixed and approved by the legislative body of the municipality.

(2)(A) All of the funds received as income from exhibition grounds and buildings acquired or constructed, in whole or in part, under the provisions of this chapter and all funds received from the sale of revenue bonds issued to acquire or construct those exhibition grounds and buildings shall be kept separate and apart from the other funds

of the city.

(B) The treasurer shall maintain separate accounts in which shall be placed the interest and sinking fund moneys and other accounts in which shall be placed the depreciation funds and to provide for refunding outstanding certificates payable out of the project's revenue.

**History.** Acts 1938 (Ex. Sess.), No. 17, § 10; A.S.A. 1947, § 19-2910.

Cross References. Self-insured fidelity bond programs, § 21-2-701.

# 14-139-113. Payment of bonds.

Bonds issued under the provisions of this chapter shall be payable solely from the revenues derived from the exhibition grounds and buildings. The bonds shall not, in any event, constitute an indebtedness of the municipality within the meaning of the constitutional provisions or limitations. It shall be plainly stated on the face of each bond that it has been issued under the provisions of this chapter and that it does not constitute an indebtedness of the municipality within any constitutional or statutory limitation.

**History.** Acts 1938 (Ex. Sess.), No. 17, § 6; A.S.A. 1947, § 19-2906.

# 14-139-114. Obligations payable solely from bond fund.

(a) No obligation shall, or may, be incurred by the municipality in the construction or acquisition of the works contemplated by this chapter. or in the condemnation of property in connection therewith, except such as shall be payable solely from the funds to be acquired from the sale of revenue bonds of the character authorized by this chapter.

(b) In view of this section, the court, in condemnation proceedings instituted under this chapter by the municipality, may make such

requirements of security as will serve to protect the landowner.

History. Acts 1938 (Ex. Sess.), No. 17, § 17; A.S.A. 1947, § 19-2916.

# 14-139-115. Bonds — Tax exemption.

Revenue bonds issued under this chapter shall be exempt from all state, county, and municipal taxation. This exemption shall include income taxation, inheritance taxation, as well as all forms of property taxation.

History. Acts 1938 (Ex. Sess.), No. 17, § 16; A.S.A. 1947, § 19-2915.

#### CHAPTER 140

# PUBLIC MARKETPLACES IN CITIES AND TOWNS

SUBCHAPTER.

- 1. General Provisions.
- 2. MARKET FACILITIES.

#### RESEARCH REFERENCES

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., §§ 541-543.

C.J.S. 63 C.J.S., Mun. Corp., § 1056.

64 C.J.S., Mun. Corp., § 1824 et seq. 87 C.J.S., Towns, § 95.

# SUBCHAPTER 1 — GENERAL PROVISIONS

of markets.

SECTION.

14-140-101. Maintenance and regulation 14-140-102. Hindering or taxing sale of farm products unlawful.

Effective Dates. Acts 1875, No. 1, § 95: effective on passage.

Acts 1911, No. 372, § 4: approved May 31, 1911. Emergency declared.

# 14-140-101. Maintenance and regulation of markets.

(a)(1)(A) The city council shall erect, establish, and regulate the markets and marketplaces for the sale of vegetables and other articles necessary for the sustenance, convenience, and comfort of the city and the inhabitants thereof.

(B) They shall have power to prescribe:

(i) The times of opening and closing the markets or marketplaces;

(ii) The kind and description of articles that may be sold therein; and

(iii) The stands or places to be occupied by the vendors.

(C) They may have full power to:

(i) Prevent forestalling;

(ii) Prohibit or regulate huckstering in the markets; and

(iii) Adopt such rules and regulations as are necessary to prevent

fraud and to preserve order in the market.

(D) They may authorize the immediate seizure, arrest, or removal from any market of any person violating its regulations, as established by ordinance, together with any article in that person's possession, and the immediate seizure and destruction of tainted or unsound meat or other provisions.

(2) No charge or assessment of any kind shall be made or levied in any manner against any farmer or producer of vegetables or provisions in bringing them to any market in any city, for standing in or occupying a place, with or without horses and wagon used in bringing the produce to the market, in any of the market spaces of the city, or in the streets contiguous thereto, on market days and evenings previous thereto.

(b) Nothing contained in this section shall be so construed as to authorize the city council of any city to pass an ordinance for the purpose of assessing or imposing any fine or punishment whatever upon any farmer or producer for selling at any time, within the city, any article of provision or vegetables to any person in any street or streets or market spaces during market hours.

**History.** Acts 1875, No. 1, § 6, p. 1; C. & Cross References. General authority & M. Dig., §§ 7596, 7606; Pope's Dig., §§ 9682, 9701; A.S.A. 1947, § 19-3301. 54-103.

# 14-140-102. Hindering or taxing sale of farm products unlawful.

- (a) It shall be unlawful for any city council, member of an incorporation, corporation, city officer, or any other person, either in an incorporated city or elsewhere, to hinder, or to interfere, or to impose a tax or a license, or to obstruct in any manner whatsoever any person in the selling or the offering for sale of any fruits, vegetables, or any products of the farm, including meats from domestic animals or livestock.
- (b) The benefits of this section shall accrue only to those who produce the articles mentioned in subsection (a) of this section or who produce

and offer them for sale, either in person or through a legally authorized agent.

**History.** Acts 1911, No. 372, §§ 1, 2; C. & M. Dig., § 7533; Pope's Dig., § 9602; A.S.A. 1947, §§ 19-3302, 19-3303.

#### **CASE NOTES**

#### ANALYSIS

Inspection fee. Police power.

#### Inspection Fee.

A city ordinance requiring dairymen selling milk in the city to pay an inspection fee is valid. Coleman v. City of Little Rock, 191 Ark. 844, 88 S.W.2d 58 (1935).

#### Police Power.

Ordinances regulating the sale of milk and fresh meats are a valid exercise of the police power delegated to cities to protect the health of such corporations and the inhabitants thereof. Carpenter v. City of Little Rock, 101 Ark. 238, 142 S.W. 162 (1911).

#### SUBCHAPTER 2 — MARKET FACILITIES

SECTION.

14-140-201. Legislative declaration.

14-140-202. Definition.

14-140-203. Market authorities.

14-140-204. Authority to establish facilities.

14-140-205. Planning for facilities.

14-140-206. Design and location.

SECTION.
14-140-207. Acquisition of property and property rights.

14-140-208. Construction — Contracts.14-140-209. Procedure for issuance of revenue bonds.

14-140-210. Records and reporting.

#### RESEARCH REFERENCES

Ark. L. Rev. Comment, Municipal Bonds and Amendment 62: Clearing Up a Serbonian Bog, 39 Ark. L. Rev. 499.

# 14-140-201. Legislative declaration.

The General Assembly determines and declares that:

(1) The inadequate market facilities for the sale of farm products in the cities and incorporated towns of the State of Arkansas endanger the health and welfare of the public in general;

(2) The provision of adequate and conveniently located market facilities are therefore necessary to alleviate such conditions; and

(3) The establishment of public market facilities are deemed to be a proper public or municipal purpose.

**History.** Acts 1949, No. 300, § 1; A.S.A. 1947, § 19-3304.

#### 14-140-202. Definition.

As used in this subchapter, unless the context otherwise requires, "public market facilities" means accommodations provided by public authority for the display and sale, both wholesale and retail, of farm products, and open to public use with or without charge. Market facilities may consist of lots, buildings, or other structures and accessories.

**History.** Acts 1949, No. 300, § 2; A.S.A. 1947, § 19-3305.

#### 14-140-203. Market authorities.

(a) The city council or other governing body of any city or incorporated town is authorized to create a market authority within its jurisdiction for the purpose of establishing public market facilities.

(b)(1) The market authority shall consist of five (5) members.

(2) The members shall be appointed by the mayor and approved by the council or other legislative body of the city creating the authority. These members shall be qualified electors residing in the city, incorporated town, or territory served by the market authority and cannot hold any elective office of the city, town, county, or state.

(3)(A) The members of the authority shall be appointed for periods of one (1), two (2), three (3), four (4), and five (5) years respectively, so that the term of one (1) member shall expire each year after the

creation of the authority.

(B) Upon the termination of office of each member, his successor shall be appointed for a term of five (5) years and shall serve until his successor shall have been appointed and qualifies.

(4) The members of the authority shall receive no compensation for

their services.

(c)(1) The authority shall have authority to employ such persons as it deems necessary in furtherance of its duties under this subchapter.

(2) The employees authorized by this section shall be chosen by the members of the market authority of the respective city or town.

**History.** Acts 1949, No. 300, §§ 3, 11; A.S.A. 1947, §§ 19-3306, 19-3314.

# 14-140-204. Authority to establish facilities.

The market authority of any city and town, acting alone or in cooperation with other market authorities or with any federal or state agency, is authorized to plan, design, locate, finance, acquire, and own property in order to construct, alter, enlarge, use, maintain, operate, and lease market facilities wherever and to the extent that such facilities are deemed necessary within its respective jurisdiction.

**History.** Acts 1949, No. 300, § 4; A.S.A. 1947, § 19-3307.

#### 14-140-205. Planning for facilities.

(a) The market authority, after a thorough investigation of the marketing problem within its jurisdiction, shall formulate for public presentation a master plan of market facilities as a guide for the further provision for market facilities properly integrated with present and proposed market facilities, subject to alteration as necessary.

(b) A program of construction and method of financing shall likewise

be formulated.

**History.** Acts 1949, No. 300, § 5; A.S.A. 1947, § 19-3308.

# 14-140-206. Design and location.

- (a) The market authority is authorized to so design and locate, subject to approval of the planning commission, any market facilities as to best serve the public purpose for which these facilities are intended.
  - (b) These facilities may consist of:
  - (1) Lots, improved or unimproved;

(2) Single or multilevel buildings; and

(3) Such other structures and accessories that may be deemed necessary by the market authority.

**History.** Acts 1949, No. 300, § 6; A.S.A. 1947, § 19-3309.

# 14-140-207. Acquisition of property and property rights.

For the purposes of this subchapter, the market authority is authorized to acquire private or public, real or personal property and property rights necessary for market facilities or other purposes by purchase, eminent domain, gift, lease, or otherwise.

**History.** Acts 1949, No. 300, § 8; A.S.A. 1947, § 19-3311.

#### 14-140-208. Construction — Contracts.

- (a) The market authority is authorized to construct, or cause to be constructed, public market facilities including buildings, structures, equipment, entrances, exits, fencing, and all other accessories necessary or desirable for the safety or convenience of persons using the facilities.
- (b) The contracts for any market facilities are to be awarded to the lowest responsible bidder in the same manner as contracts are authorized by law to be awarded in connection with highways or streets within the jurisdiction of the respective market authority.

**History.** Acts 1949, No. 300, § 9; A.S.A. 1947, § 19-3312.

#### 14-140-209. Procedure for issuance of revenue bonds.

The city council or other legislative body of any city or town desiring to provide marketing facilities as provided in this subchapter is authorized to issue revenue bonds to finance the planning, designing, acquisition of property for, construction, alteration, enlargement, maintenance, or operation of market facilities by the following procedure:

(1)(A) AUTHORIZING ORDINANCE. The city council or other legislative body of any city or town shall by ordinance provide for the issuance of

revenue bonds. The ordinance shall set forth:

(i) A brief description of the contemplated improvement;

(ii) The estimated cost thereof;

(iii) The amount, rate of interest, time, and place of payment; and

(iv) Other details in connection with the issuance of the bonds.

(B) The bonds shall bear interest at not more than six percent (6%) per annum, payable semiannually, and shall be payable at such times and places, not exceeding forty (40) years from their date, as shall be prescribed in the ordinance providing for their issuance.

(2)(A) STATUTORY MORTGAGE LIEN. The ordinance shall also declare that a statutory mortgage lien shall exist upon the property so to be acquired, and all construction thereon, and shall pledge the revenues derived from the operation of the market facilities for the purpose of

paying the bonds and interest thereon.

- (B) The pledge shall definitely fix and determine the amount of revenue which shall be necessary to be set apart and applied to the payment of the principal of, and interest on, the bonds and the proportion of the balance of the revenues and incomes which are to be set aside as a proper and adequate depreciation account, and the remainder shall be set aside for the reasonable and proper operation thereof.
- (3)(A) Notice and Hearing. After the ordinance shall have been adopted, it shall be published one (1) time in a newspaper published in the city or town with a notice to all persons concerned, stating that:

(i) The ordinance has been adopted;

(ii) The city or town contemplates the issuance of the bonds

described in the ordinance; and

(iii) Any person interested may appear before the governing body upon a certain date, which shall not be less than ten (10) days subsequent to the publication of the ordinance and notice, and present protest.

(B) At the hearing, all objections and suggestions shall be heard, and the legislative body shall take such action as it shall deem proper

in the premises.

(4)(A) ISSUANCE OF BONDS. Bonds provided for in this section shall be issued in such amount as may be necessary to provide sufficient funds to pay all costs of planning, designing, acquisition of property for, construction, alteration, enlargement, and other expenses, together with interest to a date six (6) months subsequent to the estimated date of completion.

(B)(i) Bonds issued under the provisions of this subchapter are declared to be negotiable instruments.

(ii) They shall be executed by the presiding officer and clerk or

recorder of the corporate town and bear the corporate seal.

(iii) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before delivery of the bonds, their signatures shall nevertheless be valid and sufficient for all purposes, the same as if they had remained in office until the delivery.

(C) The bonds may be sold at not less than ninety cents (90c) on the dollar, and the proceeds derived therefrom shall be used exclu-

sively for the purposes for which the bonds were issued.

(5)(A) PAYMENT OF BONDS. Bonds issued under the provisions of this section shall be payable solely from the revenues derived from leasing the market facilities.

- (B) The bonds shall not, in any event, constitute an indebtedness of the city or town within the meaning of the constitutional provisions or limitations, and it shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter and that it does not constitute an indebtedness of the city or town.
- (6)(A) Enforcement of Mortgage Lien. There shall be created a statutory mortgage lien upon the market facilities so acquired or constructed from the proceeds of bonds authorized by this section to be issued, which shall exist in favor of the holder of the bonds, and each of them, and in favor of the holder of the coupons attached to the bonds.
- (B) The market facilities shall remain subject to the statutory mortgage lien until payment in full of the principal and interest of the bonds. Subject to such restrictions as may be contained in the indenture authorized in this section, any holder of bonds issued under the provisions of this subchapter or of the coupons representing interest accrued thereon may, either at law or in equity, enforce the statutory mortgage lien conferred by this section and may, by proper suit, compel the performance of the duties of the officials of the issuing city or town.

(C) If there is default in the payment of the principal of, and interest on, any of the bonds, any court having jurisdiction in any proper action may appoint a receiver to administer the market facilities on behalf of the city or town, with power to charge and collect rates sufficient to provide for the payment of the bonds and interest thereon, and for payment of the operating expenses, and to apply the income and revenues in conformity with this subchapter

and the ordinance providing for the issuance of the bonds.

(7)(A) Rental Rates — Surplus. The rental rates for market facilities fixed precedent to the issuance of bonds shall not be reduced until all of the bonds shall have been fully paid and shall, wherever necessary, be increased, in amounts sufficient to provide for the payment of the bonds, both principal and interest, and to provide proper funds for the

depreciation account and operation and maintenance charges. However, the rates may be reduced subject to any conditions which may be set out in the ordinance authorizing the issuance of the bonds of the trust indenture referred to in this section.

(B)(i) If any surplus shall be accumulated in the operating and maintenance fund which shall be in excess of the cost of maintaining and operating the market facilities during the remainder of the fiscal year then current, and the cost of maintaining and operating the facilities during the fiscal year then next ensuing, then any excess may be transferred by the legislative body to either the depreciation account or other bond and interest redemption account.

(ii) If a surplus shall exist in the bond or interest redemption account, it may be applied to the payment of any outstanding unmatured bonds payable from the bond and interest redemption account that may be subject to call for redemption before maturity. (8)(A) Funds Custodian and Accounts. Any municipality issuing revenue bonds under the provisions of this subchapter shall install and maintain a proper system of accounts. The accounts shall be properly audited by a competent auditor, and the report of the audit shall be open to the public for inspection.

(B) The treasurer of the municipality shall be custodian of the funds derived from income received from the market facilities. All of the funds received as such income shall be kept separate and apart

from the other funds of the city.

(9)(A) Other Terms of Authorizing Ordinance. The ordinance authorizing the issuance of revenue bonds may contain provisions for the acceleration of the maturities of all unmatured bonds in the event of default in the payment of any principal or interest maturing under the bond issue, or upon failure to meet any sinking fund requirements, or in any other event stipulated in the ordinance, and such provisions will be binding.

(B) The ordinance may also, if deemed desirable, provide for:

(i) The execution, contemporaneously with the execution of bond, by the municipality of an indenture defining the rights of the bondholders inter sese:

(ii) Appointing a trustee for the bondholders;

(iii) A priority of lien as between successive bond issues;

(iv) The acceleration of bond maturities:

(v) Any covenants on the part of the municipality relating to the construction or acquisition of the market facilities or the application of safeguarding of the proceeds of the bonds, or other covenants intended for the protection of the bondholders; and

(vi) Any other provisions which are consistent with the terms of

this subchapter and which may be deemed desirable.

#### RESEARCH REFERENCES

Ark. L. Rev. Municipal Improvement Bonds in Arkansas, 8 Ark. L. Rev. 146.

# 14-140-210. Records and reporting.

Every market authority shall maintain proper accounting and financial records of all transactions and provide and file annual financial statements with the city clerk.

**History.** Acts 1949, No. 300, § 10; A.S.A. 1947, § 19-3313.

#### **CHAPTER 141**

# **OPERATION OF MUNICIPAL AUDITORIUMS**

SECTION.

14-141-101. Savings provisions.

14-141-102. Creation of commission authorized.

14-141-103. Passage or repeal of ordinance.

14-141-104. Appointment of commission-

14-141-105. Enlarging commission by two members.

14-141-106. Removal of commissioner.

SECTION.

14-141-107. Powers of commissioners generally — Exception.

14-141-108. Rules and regulations.

14-141-109. Contracts for use.

14-141-110. Expenditures.

14-141-111. Auditorium fund.

14-141-112. Supplemental appropria-

tions.

14-141-113. Quarterly reports — Annual audit.

Cross References. Local government reserve funds, § 14-73-101 et seq.

Effective Dates. Acts 1939, No. 355, § 15: approved Mar. 16, 1939. Emergency clause provided: "Whereas, in certain municipalities auditoriums are being constructed; and whereas, it is to the best interests of the public that said auditoriums be operated and controlled in the most economical and feasible manner possible; and whereas, it is to the best interest of the citizens of said municipalities that the operations of said auditoriums be in the most economical and businesslike manner possible; and whereas, the most economical and proper methods of operations may be obtained if this act were put into immediate force and effect; therefore, it is hereby declared an emergency exists and that this act is necessary for the immediate preservation of public peace, health and safety and this act, therefore, will take effect and be in force and effect from and after its passage."

Acts 1975, No. 534, § 3: Mar. 21, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 355 of 1939 [§§ 14-141-101 - 14-141-104, 14-141-106 - 14-141-113] provided for the appointment of a Municipal Auditorium Commission of five (5) members; that in a number of cities of the first class in this State having a Municipal Auditorium Commission, it would be in the better interest of the efficient operation and the long-range planning for the use of said Auditorium that the city council of such cities be authorized to enlarge the membership of the Municipal Auditorium Commission; and the immediate passage of this Act is necessary to accomplish said purpose. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

#### RESEARCH REFERENCES

**Am. Jur.** 56 Am. Jur. 2d, Mun. Corp., §§ 541-543.

# 14-141-101. Savings provisions.

Nothing in this chapter shall be construed as repealing any special act heretofore passed providing for a board of commissioners to administer and operate municipal auditoriums. This chapter shall apply solely to cities of the first class. This chapter shall not alter, amend, or affect any indenture or obligation issued by a city prior to the passage of this act.

**History.** Acts 1939, No. 355, § 13; A.S.A. 1947, § 19-2613.

**Publisher's Notes.** In reference to the term "passage of this act," Acts 1939, No. 355 was signed by the Governor on March 26, 1939.

**Meaning of "this act".** Acts 1939, No. 355, codified as §§ 14-141-101 — 14-141-104 and 14-141-106 — 14-141-113.

#### 14-141-102. Creation of commission authorized.

By appropriate action of its city council, any city of the first class that owns and operates a municipal auditorium may create a commission for the purpose of operating and managing the auditorium.

**History.** Acts 1939, No. 355, § 1; A.S.A. 1947, § 19-2601.

# 14-141-103. Passage or repeal of ordinance.

(a) Any city desiring to avail itself of the benefits of this chapter, by a majority vote of the duly elected and qualified members of its city council, may enact an ordinance creating a municipal auditorium commission to be composed of five (5) citizens who are qualified electors of the municipality.

(b) The city may repeal the ordinance creating the commission by an affirmative vote of three-fourths (34) of the duly elected and qualified

members of the city council.

**History.** Acts 1939, No. 355, § 2; A.S.A. 1947, § 19-2602.

# 14-141-104. Appointment of commissioners.

(a)(1)(A) The commissioners of a municipal auditorium commission shall be appointed by the mayor and confirmed by a majority vote of the duly elected and qualified members of the city council and shall hold office for a term of five (5) years.

(B) Those commissioners first appointed and confirmed after March 16, 1939, shall serve for terms of one (1), two (2), three (3), four (4), and five (5) years each, to be designated by the mayor and city council. Thereafter, upon the expiration of their respective terms, commissioners appointed by the mayor and approved by a majority vote of the city council shall each be appointed for a term of five (5) years.

(2) In the event of a vacancy occurring on the auditorium commission, it shall be filled by appointment by the mayor, subject to the approval of a majority vote of the duly elected and qualified members of

the city council.

(3) Each commissioner shall file the oath required of public officials

by law in the State of Arkansas.

- (b) No member of a commission created under the provisions of this chapter shall hold any remunerative elective office under the municipal, county, state, or federal government while a member of the commission. However, the mayor of any such city may be made an ex officio member of the commission.
- (c) Upon the appointment of the commissioners as provided in this section, the mayor and city council shall execute such instruments and enact such measures as may be necessary to vest complete charge of the municipally owned auditorium in the commissioners appointed under this chapter.

**History.** Acts 1939, No. 355, §§ 2, 3, 12; A.S.A. 1947, §§ 19-2602, 19-2603, 19-2612.

# 14-141-105. Enlarging commission by two members.

(a) Any city of the first class having a mayor-council form of government in which the city has established a municipal auditorium commission, as authorized in this chapter, which may desire to increase the membership of the commission by two (2) members in addition to the members thereof provided by § 14-141-104 may, upon the adoption of an ordinance therefor, enlarge the membership of the commission by two (2) additional members.

(b)(1) The members shall be appointed in the same manner as

provided in § 14-141-104.

(2) The first additional members appointed to the commission shall be appointed for terms designated by the mayor, with the term of one (1) member to expire six (6) years from the date of the appointment, and the term of the other member to expire seven (7) years from the date of the appointment.

(c) Nothing in this section shall affect or reduce the term of any member then serving on the commission. However, upon the expiration of the term of office of any member of the commission then serving, the successor member shall be appointed for a term of seven (7) years in order that the full membership of the commission shall consist of

members appointed for staggered terms, with the term of one (1)

member expiring each year.

(d) The provisions of this section shall be cumulative and supplemental to the provisions of this chapter and are not intended to modify or repeal any part or provision of this chapter unless specifically in conflict with this section.

(e) It is the sole purpose of this section to authorize the city council of a city of the first class in this state having a municipal auditorium commission to elect, by adoption of an ordinance therefor, to enlarge the membership of the municipal auditorium commission from five (5) to seven (7) members without disturbing the terms of any of the existing members, and to make the necessary adjustments in the terms of those members in order that successor members will be appointed for seven-year terms.

History. Acts 1975, No. 534, §§ 1, 2; A.S.A. 1947, §§ 19-2603.1, 19-2603.1n.

#### 14-141-106. Removal of commissioner.

Any commissioner of a municipal auditorium commission appointed by the provisions of this chapter may be removed for cause upon a two - thirds (2/3) vote of the duly elected and qualified members of the city council.

History. Acts 1939, No. 355, § 4; A.S.A. 1947, § 19-2604.

# 14-141-107. Powers of commissioners generally — Exception.

(a) The commissioners of a municipal auditorium commission appointed under this chapter shall have full and complete authority to manage, operate, maintain, and keep in a good state of repair the municipal auditorium. They shall have full and complete charge of the building, including the right to control and permit or refuse to permit such public gatherings or other meetings or affairs as the commissioners shall see fit and deem to be in the best interests of the city.

(b) The commissioners shall have the right to employ or remove managers, janitors, and other employees of whatsoever nature, kind, or character and to fix, regulate, and pay their salaries, it being the intention of this chapter to vest in the commissioners authority to operate, manage, maintain, and control the municipal auditorium and to have full and complete charge thereof.

(c) The commissioners shall not have authority or power to sell, mortgage, or encumber the auditorium unless otherwise authorized by the statutes of Arkansas.

History. Acts 1939, No. 355, § 5; A.S.A. 1947, § 19-2605.

#### 14-141-108. Rules and regulations.

The commissioners of a municipal auditorium commission shall adopt such rules and regulations as they may deem necessary and expedient for the proper operation and management of the municipal auditorium and shall have authority to alter, change, or amend the rules and regulations at their discretion.

**History.** Acts 1939, No. 355, § 8; A.S.A. 1947, § 19-2608.

#### 14-141-109. Contracts for use.

The commissioners of a municipal auditorium commission shall have authority to enter into contracts with persons, firms, corporations, or organizations for the use of the auditorium building, or parts thereof.

**History.** Acts 1939, No. 355, § 7; A.S.A. 1947, § 19-2607.

# 14-141-110. Expenditures.

(a)(1) The commissioners of a municipal auditorium commission under this chapter shall have, in addition to other powers enumerated in this chapter, the exclusive right and power to make purchases of all supplies, apparatus, and other property and things requisite and necessary for the management and operation of the city auditorium.

(2) In all expenditures which may exceed three hundred dollars (\$300), it shall be the duty of the commissioners to advertise for bids and let the work or contract to the lowest responsible bidder, when and

if it is feasible and possible to obtain competitive bids.

(b) The commissioners shall have no power in any case, except upon advertisement and to the lowest bidders, to make any contract with any person associated in business with or related within the sixth degree of consanguinity or affinity under the civil law to any member of the auditorium commission, or to the mayor or any member of the city council. Every contract in which such forbidden person shall have an interest, directly or indirectly, shall be null and void.

(c) In any city which has a population between twenty-five thousand five hundred (25,500) and twenty-seven thousand (27,000) according to the most recent federal decennial census, the commission shall be allowed to make purchases of one thousand dollars (\$1,000) or less

without soliciting competitive bids.

**History.** Acts 1939, No. 355, § 6; 1979, No. 689, § 1; A.S.A. 1947, §§ 19-2606, 19-2606, 1.

#### 14-141-111. Auditorium fund.

(a)(1) The commissioners of a municipal auditorium commission appointed under this chapter shall have the authority to utilize all revenues derived from the auditorium in the operations of the auditorium.

(2)(A) All funds derived from the use of the auditorium shall be segregated into an auditorium fund, which shall be used exclusively in the operations of the auditorium by the commissioners.

(B) Moneys in the fund shall not be mingled with other funds of the

city and shall be handled exclusively by the commissioners.

(b)(1) The commissioners shall each furnish to the city a five thousand dollar (\$5,000) surety bond that will serve to insure the city against any misappropriation or mishandling of funds.

(2) The surety on the bond shall be a reputable surety corporation.

(3) The premium on the bonds shall be paid for from moneys in the fund.

(c) The commissioners shall receive no salary for their services but shall be reimbursed from the fund for actual expenses incurred in the performance of their duties.

(d) The fund may also be expended by the commissioners, as they deem best, for the purpose of obtaining conventions or other attractions

to meet in the auditorium.

**History.** Acts 1939, No. 355, § 10; **Cross References.** Self-insured fidelity bond programs, § 21-2-701.

# 14-141-112. Supplemental appropriations.

(a) Upon each quarterly report being made to the mayor and city council by the commissioners of a municipal auditorium commission, the city council may appropriate funds from the general revenue fund of the city, or from such other funds as the city may have available, to make up any deficits or to provide such funds as may be necessary to carry on the operations of the auditorium.

(b) The council may, at any time other than when the quarterly report is filed, appropriate such funds as it deems necessary from the general revenue fund or such other funds that the city may have available for the purpose of maintaining and operating the auditorium.

**History.** Acts 1939, No. 355, § 11; A.S.A. 1947, § 19-2611.

# 14-141-113. Quarterly reports — Annual audit.

(a)(1) The commissioners of a municipal auditorium commission shall submit quarterly reports, beginning three (3) months after they take their oath of office, and each three (3) months thereafter, reporting in full on the operations of the auditorium including an accounting of receipts and disbursements, to the mayor and city council. The com-

missioners shall furnish such other and further reports, data, and information as may be requested by the mayor or city council.

(2) The quarterly report to the mayor and city council with respect to receipts and disbursements shall be certified by the commissioners as correct.

(b) The commissioners shall further submit an annual audit of the operations of the auditorium to the mayor and city council.

**History.** Acts 1939, No. 355, § 9; A.S.A. 1947, § 19-2609.

# CHAPTER 142

#### LOCAL GOVERNMENT LIBRARY BONDS

#### SUBCHAPTER.

- 1. [Reserved.]
- 2. Local Government Library Bond Act.

#### Subchapter 1 — General Provisions

#### [Reserved.]

#### SUBCHAPTER 2 — LOCAL GOVERNMENT LIBRARY BOND ACT

SECTION.		SECTION.	
14-142-201.	Title.	14-142-213.	Bonds generally — Sale.
14-142-202.	Legislative intent.	14-142-214.	Bonds generally — Execu-
14-142-203.	Definitions.		tion.
14-142-204.	Construction.	14-142-215.	Bonds generally - Succes-
14-142-205.	Subchapter supplemental.		sive issues.
14-142-206.	Venue.	14-142-216.	Bonds generally - Pledge of
14-142-207.	Bonds generally — Authoriz-		taxes generally.
	ing ordinance for munici-	14-142-217.	Bonds generally — Liability.
	palities.	14-142-218.	Bonds generally - Pledge
14-142-208.	Bonds generally — Election		and collection of ad valo-
	to authorize issuance.		rem taxes.
14-142-209.	Bonds generally — Terms	14-142-219.	Bonds generally — Interim
	and conditions.		borrowing.
14-142-210.	Bonds generally — Interest	14-142-220.	Refunding bonds.
	rates.	14-142-221.	Bonds generally — Tax ex-
14-142-211.	Bonds generally - Trust in-		emption.
	denture.	14-142-222.	Bonds generally — Mortgage
14-142-212.	Bonds generally — Contents.		lien.
	9		

Effective Dates. Acts 1993, No. 920, § 29: Apr. 7, 1993. Emergency clause provided: "It is hereby found and declared that by virtue of adoption of Arkansas Constitution, Amendment 72, that there are now no provisions for municipalities and counties to conduct elections or otherwise implement the provisions of said amendment and that municipalities and counties have an immediate and pressing need for borrowing funds through the issuance of bonds authorized by Amendment 30 and Amendment 38, as amended by Amendment 72, attributable in substantial part to the lack of authority prior to the adoption of Amendment 72, for the

levy and pledge of ad valorem taxes sufficient to finance the construction of capital improvements to or for libraries in the State of Arkansas. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the protection of the public peace, health and safety, shall take effect and be in full force, immediately upon its passage and approval."

#### 14-142-201. Title.

This subchapter shall be referred to and may be cited as the "Local Government Library Bond Act of 1993".

History. Acts 1993, No. 920, § 1.

# 14-142-202. Legislative intent.

(a) The people of the State of Arkansas by the adoption of Arkansas Constitution, Amendment 72, which amends Arkansas Constitution, Amendments 30 and 38, have expressed their intention to provide cities having a population of not less than five thousand (5,000) expanded powers and authority with respect to the creation of bonded indebtedness for capital improvements to or construction of public city libraries and to provide counties expanded powers and authority with respect to the creation of bonded indebtedness for capital improvements to or construction of county libraries for county library services or systems, and have empowered the General Assembly to define and prescribe certain matters with respect to the exercise of this power and authority.

(b) To that end this subchapter is adopted to enable the accomplishment and realization of the public purposes intended by Arkansas Constitution, Amendment 72, and is not intended to otherwise limit in any manner the exercise of the powers of counties and municipalities.

History. Acts 1993, No. 920, § 2.

#### 14-142-203. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Bonds" means bonds issued pursuant to this subchapter;

(2) "Capital improvements to or construction of public libraries" in the case of municipalities, or "capital improvements to or construction of county libraries for county library services or systems", in the case of counties, or "capital improvements" generally, for the purposes of Arkansas Constitution, Amendments 30 and 38, as amended by Arkansas Constitution, Amendment 72 and this subchapter, mean, whether obtained by purchase, lease, construction, reconstruction, restoration, improvement, alteration, repair, or other means:

(A) Any buildings, improvements and other physical public library betterment or improvement or any preliminary plans, studies, or

surveys relative thereto;

(B) Land or rights in land, including, without limitation, leases, air rights, easements, rights-of-way, or licenses; and

- (C) Any furnishings, machinery, vehicles, apparatus, or equipment, which shall include, without limiting the generality of the foregoing definition, the following:
  - (i) Administrative, executive, or other public library offices;

(ii) Computer systems, hardware and apparatus; and

(iii) Research and reading materials:

- (3) "Chief executive" means the mayor of a municipality or the county judge of a county;
- (4) "Clerk" means the clerk or recorder of a municipality or county clerk of a county;

(5) "County" means any county in the State of Arkansas;

(6) "Issuer" means a municipality or a county;

(7) "Legislative body" means the council, board of directors, board of commissioners, or similar elected governing body of a municipality;

(8) "Municipality" means any city having a population of not less than five thousand (5,000) persons in the State of Arkansas;

(9) "Order" means an order entered by the county court of a county;

(10) "Ordinance" means an ordinance or other appropriate legislative enactment of a legislative body; and

(11) "Tax" or "ad valorem tax" means a tax authorized for the payment of bonded indebtedness in Arkansas Constitution, Amendments 30 and 38, as amended by Arkansas Constitution, Amendment 72.

History. Acts 1993, No. 920, § 3.

# 14-142-204. Construction.

This subchapter shall be construed liberally to effectuate the legislative intent and the purposes of this subchapter as complete and independent authority for the performance of each and every act and thing herein authorized, and all powers herein granted shall be broadly interpreted to effectuate the intent and purposes of this subchapter and not as a limitation of powers.

History. Acts 1993, No. 920, § 4.

# 14-142-205. Subchapter supplemental.

(a) It is the specific intent of this subchapter that the provisions of this subchapter are supplemental to other constitutional or statutory provisions which may provide for the financing of capital improvements for public libraries.

(b) Nothing contained in this subchapter shall be deemed to be a restriction or limitation upon alternative means of financing previously available or hereafter made available to municipalities or counties for the purposes set forth in this subchapter.

(c) Nothing herein shall be construed as preventing coordination of the services of a city public library and a county public library, the services of libraries of different cities, or the services of libraries of different counties.

History. Acts 1993, No. 920, §§ 5, 24.

#### 14-142-206. Venue.

For the purposes of this subchapter, when it is necessary to determine whether publication or other activity has taken place within a municipality lying in more than one (1) county, or where suit shall be filed contesting an election in that municipality, then the publication, activity, or suit shall take place in the county in which a majority of the people living in the municipality reside.

History. Acts 1993, No. 920, § 6.

# 14-142-207. Bonds generally — Authorizing ordinance for municipalities.

(a) Whenever one hundred (100) or more tax-paying electors of any municipality shall file a petition with the mayor:

(1) Asking that an ad valorem tax on real and personal property be levied for capital improvements, which petition shall specify a rate of

taxation not to exceed three (3) mills on the dollar; and

(2) Authorizing the legislative body of the municipality to issue bonds as prescribed by this subchapter for capital improvements to or construction of a public library and to pledge all or any part of the tax for the purpose of retiring the bonds, a legislative body shall authorize the issuance of the bonds by ordinance specifying the maximum principal amount of bonds to be issued, and the rate of any ad valorem tax to be levied and pledged to the retirement of the bonds as specified in Arkansas Constitution, Amendment 30, as amended by Arkansas Constitution, Amendment 72.

(b) Whenever one hundred (100) or more tax-paying electors of any

county shall file a petition with the county court:

(1) Asking that an ad valorem tax on real and personal property be levied for capital improvements, which petition shall specify a rate of

taxation not to exceed three (3) mills on the dollar; and

(2) Authorizing the county court to issue bonds as prescribed by this subchapter for capital improvements to or construction of county libraries for county library services or systems and to pledge all or any part of the tax for the purpose of retiring the bonds, the county court shall authorize the issuance of the bonds by order specifying the maximum principal amount of bonds to be issued, and the rate of any ad valorem tax to be levied and pledged to the retirement of the bonds as specified in Arkansas Constitution, Amendment 38, as amended by Arkansas Constitution, Amendment 72.

#### 14-142-208. Bonds generally — Election to authorize issuance.

- (a) The question of the issuance of such bonds shall be submitted to the electors of the municipality or county at the general election, or at a special election called for that purpose, as provided in the ordinance or order and held in the manner provided in this subchapter; provided, however, that no voter residing within a municipality levying a maintenance tax for libraries or levying a tax pledged for the purpose of retiring library bonds issued by the municipality or pledged to pay for capital improvements to or construction of a public library pursuant to Arkansas Constitution, Amendment 30 and Amendment 72, shall be entitled to vote on the question of the issuance of bonds by the county within which the municipality is located as authorized pursuant to Arkansas Constitution, Amendment 38 and Amendment 72, and this section.
- (b)(1) Except as otherwise provided in this subchapter, the election shall be held and conducted in the same manner as a special or general election under the election laws of the state.
- (2) The ordinance or order shall set forth the form of the ballot question or questions in the form prescribed by Arkansas Constitution, Amendment 30 or Amendment 38, as amended by Arkansas Constitution, Amendment 72.
- (3) Notice of the election shall be given by the clerk of the issuer by one (1) publication in a newspaper having general circulation within the municipality or county not less than ten (10) days prior to the election. No other publication or posting of a notice by any other public official shall be required.
- (4) The election shall be held no earlier than thirty (30) days after the date of adoption of the ordinance or entry of the order in which the election is called.
- (c) The chief executive officer of the municipality or county shall proclaim the results of the election by issuing a proclamation and publishing it one (1) time in a newspaper having general circulation within the municipality or county.
- (d)(1) The results of the election as stated in the proclamation shall be conclusive unless suit is filed in the circuit court in the county in which the issuer is located within thirty (30) days after the date of the publication.
- (2) No other action shall be maintained to challenge the validity of the bonds and of the proceedings authorizing the issuance of the bonds unless suit is filed in such circuit court within thirty (30) days after the date of adoption of an ordinance or entry of the order authorizing the sale of the bonds.

**History.** Acts 1993, No. 920, § 9; 1995, No. 545, § 1.

Amendments. The 1995 amendment, in the proviso in (a), inserted "or levying a tax pledged for ... a public library," substi-

tuted "Amendment 30 and Amendment 72" for "Amendment 30," and added the language beginning "of the issuance of bonds."

#### 14-142-209. Bonds generally — Terms and conditions.

(a) As the ordinance, order, or trust indenture as authorized in this subchapter may provide, the bonds may:

(1) Be in registered or other form;

(2) Be in such denominations:

- (3) Be exchangeable for bonds of another denomination;
- (4) Be made payable at such places within or without the state;

(5) Be issued in one (1) or more series;

(6) Bear such date or dates:

(7) Mature at such time or times:

(8) Be payable in such medium of payment:

(9) Be subject to such terms of redemption; and

(10) May contain such other terms, covenants, and conditions, including, without limitation, those pertaining to:

(A) The custody and application of the proceeds of the bonds;

- (B) The collection and disposition of tax collections; (C) The maintenance of various funds and reserves;
- (D) The nature and extent of the pledge and security;

(E) The maintaining of taxes; (F) The remedies on default:

(G) The rights, duties, and obligations of the issuer and the trustee, if any, for the owners of the bonds; and

(H) The rights of the owners of the bonds.

(b) All bonds and notes issued under the provisions of this subchapter shall be and are declared to be negotiable instruments within the meaning of the negotiable instruments law of the state.

History. Acts 1993, No. 920, § 10.

# 14-142-210. Bonds generally — Interest rates.

Bonds for capital improvements issued pursuant to this subchapter shall not bear a rate of interest in excess of the rate provided in the Arkansas Constitution.

History. Acts 1993, No. 920, § 11.

# 14-142-211. Bonds generally — Trust indenture.

(a) The ordinance or order authorizing the bonds may provide for the execution by the chief executive officer of the issuer of a trust indenture which defines the rights of the owners of the bonds and provides for the appointment of a trustee for the owners of the bonds.

(b) The trust indenture may provide for the priority between and among successive issues and may contain any of the provisions set forth in § 14-142-209, and any other terms, covenants, and conditions that

are deemed desirable.

#### 14-142-212. Bonds generally — Contents.

It shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter and either Arkansas Constitution, Amendment 30, in the case of municipalities, or Arkansas Constitution, Amendment 38, in the case of counties, both as amended by Arkansas Constitution, Amendment 72.

History. Acts 1993, No. 920, § 13.

#### 14-142-213. Bonds generally — Sale.

The bonds may be sold at public or private sale for such price, including, without limitation, sale at a discount, and in such manner as the issuer may determine.

History. Acts 1993, No. 920, § 15.

# 14-142-214. Bonds generally — Execution.

The bonds shall be executed in the manner provided by the Registered Public Obligations Act of Arkansas, § 19-9-401 et seq., as that subchapter may be amended.

History. Acts 1993, No. 920, § 14.

# 14-142-215. Bonds generally — Successive issues.

There may be successive bond issues for the purpose of financing the same capital improvements.

History. Acts 1993, No. 920, § 18.

# 14-142-216. Bonds generally — Pledge of taxes generally.

The bonds shall be secured by, and contain a pledge of, any tax or combination of taxes authorized to pay the bonded indebtedness and shall be payable solely from the taxes authorized by Arkansas Constitution, Amendment 30 or Amendment 38, as amended by Arkansas Constitution, Amendment 72, and this subchapter. However, the issuer is not prohibited from using other taxes, revenues, or receipts to retire the bonds.

**History.** Acts 1993, No. 920, § 16.

# 14-142-217. Bonds generally - Liability.

No officer, employee, or member of the issuer shall be personally liable on any bonds issued under the provisions of this subchapter or for any damages sustained by any person in connection with any contracts entered into to carry out the purposes and intent of this subchapter, unless that person has acted with a corrupt intent.

History. Acts 1993, No. 920, § 20.

# 14-142-218. Bonds generally — Pledge and collection of ad valorem taxes.

(a) The ad valorem tax pledged for payment of bonds shall constitute a special fund pledged as security for the payment of such indebtedness.

(b)(1) The ad valorem tax shall never be extended for any other purpose nor collected for any greater length of time than necessary to retire such bonded indebtedness.

(2) However, tax collections in excess of the amount required to retire the debt according to its terms may, subject to covenants entered into with the owners of the bonds, be pledged as security for the issuance of additional bonds if authorized by the electors.

(3) The tax for the additional bonds shall terminate within the time

provided for the tax originally imposed.

(c) Upon retirement on the bonded indebtedness, any surplus tax collections which may have accumulated shall be transferred to the general fund of the issuer, and shall be used for maintenance and operation of the public library.

(d) The collection of ad valorem taxes, or a portion thereof, may be suspended by the issuer when not required for the payment of the

bonds, subject to any covenants with the owners of the bonds.

(e) Notwithstanding any other provision of this subchapter, a tax approved by the voters for the purpose of paying bonded indebtedness shall not be reduced or diminished, nor shall it be used for any other purpose than to pay principal of or premium or interest on the bonded indebtedness, and the reasonable fees of a trustee or paying agent so long as the bonded indebtedness shall remain outstanding and unpaid.

(f) Notwithstanding any other provision of this subchapter, a tax approved by the voters and levied for the purpose of paying bonded indebtedness authorized pursuant to this subchapter by a county shall not be levied against any real or personal property which is taxed by a municipality for the maintenance of a public library pursuant to Arkansas Constitution, Amendment 30, as amended by Arkansas Constitution, Amendment 72; provided, however, that no tax levied by a county for the purpose of paying bonded indebtedness authorized pursuant to this subchapter shall ever be diminished or reduced while such bonds are outstanding if a municipality within the county approves such a maintenance tax after the date on which the voters of a county approve a tax for the purpose of paying bonded indebtedness authorized pursuant to this subchapter.

History. Acts 1993, No. 920, § 17.

# 14-142-219. Bonds generally — Interim borrowing.

(a) If the issuance of bonds is authorized in accordance with the provisions of this subchapter, a municipality or county is authorized to obtain interim financing pending the delivery of all or any part of the bonds from such sources and upon such terms as the municipality or the county shall determine.

(b) As evidence of any indebtedness so incurred, the municipality or the county may execute and deliver its promissory note or notes and pledge to the payment thereof the tax or taxes approved by the voters to be pledged to the bonds, and to otherwise secure the notes as bonds

issued under this subchapter may be secured.

(c) The notes may:

(1) Bear such date or dates;

(2) Mature at such time or times, not exceeding three (3) years from their respective dates;

(3) Bear interest at such rate or rates;

(4) Be in such form;

(5) Be executed in such manner;

(6) Be payable at such place or places;

(7) Contain such provisions for prepayment prior to maturity; and

(8) Contain such other terms, covenants, and conditions as the ordinance or order may provide which are not inconsistent with the provisions of this subchapter.

History. Acts 1993, No. 920, § 22.

# 14-142-220. Refunding bonds.

(a) Bonds may be issued under this subchapter for the purpose of refunding any outstanding bonds issued hereunder.

(b)(1) The refunding bonds may be either sold for cash or delivered in

exchange for the outstanding obligations.

(2) If sold for cash, the proceeds may be either applied to the payment of the obligations refunded or deposited in an irrevocable trust for the retirement thereof either at maturity or on an authorized

redemption date.

(c) Refunding bonds shall in all respects be authorized, issued, and secured in the manner provided for the bonds being refunded, and shall have all the attributes of the refunded bonds. However, if the refunding bonds are not in a greater principal amount than the bonds being refunded, the question of issuing such refunding bonds need not be submitted at an election.

(d) The ordinance or order under which the refunding bonds are issued may provide that any refunding bonds shall have the same priority of lien on all sources of taxation or other income as originally

pledged for payment of the obligation refunded thereby.

(e)(1) Bonds may also be issued under the provisions of this subchapter for the purpose of refunding any outstanding bonds issued pursuant to Arkansas Constitution, Amendment 62, whether or not issued prior

to or subsequent to April 7, 1993, to finance capital improvements if the question of the issuance of the refunding bonds is submitted to the electors in the manner provided in § 14-142-208.

(2)(A) The refunding bonds may be either sold for cash or delivered in

exchange for the outstanding obligations.

(B) If sold for cash, the proceeds may either be applied to the payment of the bonds being refunded or deposited in an irrevocable trust for the retirement thereof at maturity or on an authorized redemption date.

History. Acts 1993, No. 920, § 23.

# 14-142-221. Bonds generally — Tax exemption.

Bonds and notes issued under the provisions of this subchapter and the income thereon shall be exempt from all state, county, and municipal taxes, including, without limitation, all income, property, and inheritance taxes.

History. Acts 1993, No. 920, § 21.

# 14-142-222. Bonds generally - Mortgage lien.

(a) The ordinance, order, or trust indenture authorized in §§ 14-142-207 and 14-142-209 may, but need not, impose a foreclosable mortgage lien upon the capital improvements financed with the proceeds of bonds issued under this subchapter.

(b) The nature and extent of such mortgage lien may be controlled by the ordinance, order, or trust indenture, including, without limitation,

provisions:

(1) Pertaining to the release of all or part of the capital improvements from the mortgage lien;

(2) Pertaining to the priority of the mortgage lien in the event of

successive bond issues; and

(3) Authorizing any owner of bonds, or a trustee on behalf of all owners, either at law or in equity, to enforce the mortgage lien and, by proper suit, compel the performance of the duties of the officials of the issuer set forth in this subchapter or in the ordinance, order, or trust indenture authorizing and securing the bonds.

(c) References in this section to "mortgage lien" shall include a security interest in any personal property constituting the capital improvements, or part thereof, financed with the proceeds of bonds

issued under this subchapter.

History. Acts 1993, No. 920, § 19.

#### CHAPTER 143

# REGIONAL INTERMODAL FACILITIES ACT

SECTION.		SECTION.	
14-143-101.	Title.	14-143-114.	Issuance of revenue bonds —
	Definitions.		Execution.
	Establishment of authorities.		Issuance of revenue bonds — Obligation of authority.
	Authority as public corporation.	14-143-116.	Issuance of revenue bonds — Refunding bonds.
	Appointment of board. Vacancy on board.	14-143-117.	Issuance of revenue bonds — Mortgage lien.
14-143-107.	Compensation prohibited — Reimbursement of ex-	14-143-118.	Issuance of revenue bonds — Default.
	penses.	14-143-119.	Agreements to obtain funds.
14-143-108.	Facilities authorized.		Acquisition of property.
14-143-109.	Powers of authority gener-	14-143-121.	Exemption from taxation.
	ally.		Use of surplus funds.
14-143-110.	Issuance of revenue bonds — Authorization.		Public and private contributions.
14-143-111.	Issuance of revenue bonds —	14-143-124.	Accounts and reports.
	Resolution of authority — Nature of bonds.	14-143-125.	County, municipal, and state authority.
14-143-112.	Issuance of revenue bonds —	14-143-126.	Lease of facilities.
	Indenture.	14-143-127.	Sale of assets.
14-143-113.	Issuance of revenue bonds —	14-143-128.	Authorized investors.
	Price and manner sold.	14-143-129.	Construction.

A.C.R.C. Notes. Acts 1997, No. 690, § 32, provided: "All laws and parts of laws in conflict with this Act are hereby repealed. However, to the extent any provisions of this act conflict with the provisions of Act 77 of 1997, the provisions of Act 77 shall prevail."

Effective Dates. Acts 1997, No. 690, § 33: Mar. 19, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is currently no specific authority for the creation of regional intermodal facilities

through cooperative efforts of municipalities and counties, that the passage of this Act and its immediate effectiveness will make it possible to provide necessary intermodal facilities on a regional basis to meet the transportation needs of the public. Therefore, in order to meet these needs, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

#### 14-143-101. Title.

This chapter may be cited as the "Regional Intermodal Facilities Act."

History. Acts 1997, No. 690, § 1. A.C.R.C. Notes. The punctuation in this section is incorrect or does not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

#### 14-143-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Authority" means any authority created under the provisions of this chapter;

(2) "Municipality" or "municipal corporation" means a city of the first

class, a city of the second class, or an incorporated town;

(3) "Governing body" means the council, board of directors, or city commission of any municipality or the county court of any county;

- (4) "Equip" means to install or place on or in any building or structure, equipment of any and every kind, whether or not affixed, including, without limiting the generality of the foregoing, building service equipment, fixtures, heating equipment, air conditioning equipment, machinery, furniture, furnishings, and personal property of every kind:
- (5) "Sell" means to sell for such price, in such manner, and upon such terms as the authority shall determine including, without limiting the generality of the foregoing, private or public sale; and if public, pursuant to such advertising as the authority shall determine, sale for cash or credit payable in lump sum, or in installments over such period as the authority shall determine; and if on credit, with or without interest and at such rate or rates as the authority shall determine;
- (6) "Lease" means to lease for such rentals, for such period or periods, and upon such terms and conditions as the authority shall determine, including, without limiting the generality of the foregoing, the granting of such renewal or extension options for such rentals, for such periods, and upon such terms and conditions as the authority shall determine and the granting of such purchase options for such prices and upon such terms and conditions as the authority shall determine;

(7) "Construct" means to acquire or build, in whole or in part, in such manner and by such method, including contracting therefor, and if the latter, by negotiation or bids upon such terms and pursuant to such advertising, as the authority shall determine to be in the public interest and necessary under the circumstances existing at the time to accomplish the purposes of and authorities set forth in this subchapter;

- (8) "Facilities" or "property" or "properties" means any real property, personal property, or mixed property of any and every kind that can be used, or that will be useful, to accomplish the purposes of, and powers set forth in, this chapter including, without limiting the generality of the foregoing, rights-of-way, roads, streets, utilities, materials, equipment, fixtures, machinery, furnishings, furniture, instrumentalities, and other real, personal, or mixed property of every kind;
  - (9) "County" means any county in this state; (10) "State" means the State of Arkansas;
- (11) "Person" means any natural person, partnership, corporation, association, organization, business trust, and public or private person or entity;
- (12) "Intermodal" means more than one (1) mode of interconnected movement of freight, commerce, or passengers;

(13) "Mode" means railway, highway, air, pipeline, waterway, transit, and communication systems and related means of movement of freight,

commerce, or passengers; and

(14) "Basic local exchange service" means the service provided to the premises of residential or business customers composed of the follow-

(A) Voice grade access to the public switched network, with ability

to place and receive calls.

(B) Touch tone service availability.

- (C) Flat rate residential local service and business local service.
- (D) Access to emergency services (911/E911) where provided by local authorities.

(E) Access to basic operator services,

(F) A standard white page directory listing, (G) Access to basic local directory assistance,

(H) Access to long distance toll service providers, and

(I) The minimum service quality as established and required by the Public Service Commission on February 4, 1997.

History. Acts 1997, No. 690, § 2.

form to Code style. Pursuant to § 1-2-303, A.C.R.C. Notes. The punctuation in the Arkansas Code Revision Commission this section is incorrect or does not con- is unable to correct the punctuation.

#### 14-143-103. Establishment of authorities.

(a)(1) Any two (2) or more municipalities, any two (2) or more contiguous counties, or any one (1) or more municipalities together with any one (1) or more contiguous counties, are authorized to create and establish an authority as prescribed in this chapter for the purpose of acquiring, equipping, constructing, maintaining, and operating regional intermodal facilities.

(2) No county or municipality shall participate in such authority unless and until its governing body so provides by ordinance, and enters into an agreement with the other participating governmental units establishing the terms and conditions for the operation of the authority

within the limitations provided in this chapter and such other laws of the State of Arkansas as may be applicable.

(b) To the extent that it is consistent with this chapter, the agreement shall specify the information provided for in § 25-20-104(c).

(c) The agreement shall be filed with the Secretary of State.

History. Acts 1997, No. 690, § 3.

# 14-143-104. Authority as public corporation.

(a) Each authority when created, and the members thereof, shall constitute a public corporation and, as such, shall have perpetual succession, may contract and be contracted with, sue and be sued, and have and use a common seal.

(b) The exercise of the powers and performance of duties provided for in this chapter by each authority and its officers, agents, and employees are declared to be public and governmental functions, exercised for a public purpose and matters of public necessity, conferring upon each authority governmental immunity from suit in tort.

History. Acts 1997, No. 690, § 4.

# 14-143-105. Appointment of board.

(a) Subject to such limitations as may be contained in the agreement provided for in § 14-143-103, the management and control of each authority and its property, operations, business, and affairs shall be lodged in a board of not less than six (6) nor more than twenty-four (24) persons who shall be appointed for terms of six (6) years each as

hereinafter provided.

(b) The number of members that each of the participating governmental units is entitled to appoint to the board shall be set forth in the agreement provided for in § 14-143-103. However, each of the participating governmental units shall be entitled to appoint at least one (1) member to the board. Appointments shall be made by the mayor of each participating municipality and the county judge of each participating county.

(c) The members of the authority shall have staggered terms, as provided in the agreement establishing the authority, as follows: One-third ( $\frac{1}{3}$ ) of the members for six-year terms; one-third ( $\frac{1}{3}$ ) of the members for two-year terms. Thereafter, all appointments shall be for six-year

terms.

(d) All members of the board appointed by the participating municipalities and counties shall be bona fide residents and qualified electors of the county or municipality which the members represent.

History. Acts 1997, No. 690, § 5.

# 14-143-106. Vacancy on board.

(a) If any member of an authority dies, resigns, is removed, or for any other reason ceases to be a member of the authority, the mayor or the county judge, as appropriate to the governmental unit which the member represented, shall appoint another person to fill the unexpired portion of the term of the member.

(b) A member of the authority once qualified shall not be removed during his appointment except for cause by the mayor or the county judge, as appropriate to the governmental unit which the member represents, or upon such other conditions as shall be set forth in the

agreement establishing the authority.

# 14-143-107. Compensation prohibited — Reimbursement of expenses.

(a) No member of the board of an authority shall receive any compensation, whether in form of salary, per diem allowance, or otherwise, for or in connection with his services as a member.

(b) Each member shall, however, be entitled to reimbursement by the authority for any necessary expenditures in connection with the per-

formance of his general duties as a member.

History. Acts 1997, No. 690, § 7.

A.C.R.C. Notes. This section contains grammatical or stylistic errors. Pursuant

to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the language.

#### 14-143-108. Facilities authorized.

Each authority is authorized and empowered to acquire, equip, construct, maintain, and operate an intermodal facility and appurtenant facilities or properties so located to best serve the region in which they are located. Each authority is further authorized and empowered to acquire, equip, construct, maintain, and operate industrial, warehouse, distribution and related types of facilities, including education, training, office and support facilities, located at or near an intermodal facility for the purpose of securing and developing industry.

History. Acts 1997, No. 690, § 8.

# 14-143-109. Powers of authority generally.

(a) Each authority is given power and authority as follows:

(1) To make and adopt all necessary bylaws, rules, and regulations for its organization and operations not inconsistent with law;

(2) To elect its own officers, to appoint committees, and to employ and

fix the compensation for personnel necessary for its operation;

(3) To enter into contracts with any person, governmental department, firm, or corporation, including both public and private corporations, and generally to do any and all things necessary or convenient for the purpose of acquiring, equipping, constructing, maintaining, improving, extending, financing, and operating an intermodal facility including, without limitation, railway-highway terminals, highway-railway terminals, shipping facilities, railroad sidings, turnouts, spur branches, switches, yards tracks, bridges and trestles, parks for industrial facilities, buildings, warehouses, utilities, highways, roads, streets, roadways and approaches, bulk loading and unloading facilities, elevators, tipples, compresses, refrigeration storage plants, transfer equipment, and related improvements and facilities as it may deem feasible for the expeditious and efficient handling of freight, commerce, and passengers to and from any other part of the state or any other state and foreign countries to best serve the region in which it is located;

(4) To assume the rights and responsibilities of the municipality with respect to all existing and future permits and franchises with public

utilities for the supplying of public utility service to be intermodal facility;

(5) To delegate any authority given to it by law to any of its officers,

committees, agents, or employees;

(6) To apply for, receive, and use grants-in-aid, donations, and contributions from any source, including, but not limited to, the federal government, or any agency thereof, and the State of Arkansas, or any agency thereof, and to accept and use bequests, devises, gifts, and donations from any person, firm, or corporation;

(7) To acquire lands and hold title thereto in its own name;

(8) To acquire, own, hold, lease as lessor or as lessee, sell, encumber, dispose of, or otherwise deal in and with any facilities or real, personal,

or mixed property, wherever located;

(9) To borrow money and execute and deliver negotiable notes, mortgage bonds, other bonds, debentures, and other evidences of indebtedness therefor, and give such security therefor as shall be requisite, including giving a mortgage or deed of trust on its properties and facilities in connection with the issuance of mortgage bonds;

(10) To raise funds by the issuance and sale of revenue bonds in the

manner and according to the terms set forth in this chapter;

(11) To expend its funds in the execution of the powers and authorities given in this chapter and to invest and reinvest any of its funds pending need therefor;

(12) To apply for, receive, and use loans, grants, donations, technical assistance, and contributions from any agency of the federal govern-

ment or the State of Arkansas;

(13) To constitute the authority, or a committee thereof, as improvement district commissioners and to create and operate an improvement district, composed of the area encompassed within the jurisdictions of the participating governing bodies, upon the petition of persons claiming to be two-thirds (%) in value of the owners of real property in the area, as shown by the last county assessment. The improvement district shall be for the purpose of financing the construction, reconstruction, or repair of the regional intermodal facilities. The creation and operation of an improvement district shall, to the extent consistent with this chapter, be in accordance with the procedures established by the laws of this state for the creation and operation of municipal improvement districts;

(14) To enforce all rules, regulations, and statutes relating to its

intermodal facilities;

(15) To plan, establish, develop, construct, enlarge, improve, maintain, equip, operate, and regulate its intermodal facilities and auxiliary services and facilities, and to establish minimum building codes and regulations and to protect and police the intermodal facilities and other facilities of the authority, in cooperation with the law enforcement agencies and officers having jurisdiction in the area where the facilities of the authority are located;

(16) To levy and collect a tax or fee, which tax or fee shall be levied upon and collected from the shippers, transporters, or other users

loading or unloading freight, commerce or passengers at the terminal or other facilities of the authority, and the authority is empowered to make reasonable classifications of such shippers, transporters, or users for

this purpose;

(17) To receive real and personal property from the United States for intermodal facilities and related purposes, by donation, purchase, lease or otherwise, and subject to such conditions and requirements relating thereto as the United States may require and to which the authority may agree;

(18) To apply to the proper authorities of the United States pursuant to appropriate law for the right to establish, operate, and maintain foreign trade zones within the area of jurisdiction of the member municipalities and/or counties and to establish, operate, and maintain

such foreign trade zones:

(19) To promote, advertise, and publicize the authority and its facilities; provide information to shippers, transporters, users, operators and other commercial interests; and to represent and promote the interests of the authority; and

(20) To take such other action, not inconsistent with law, as may be necessary or desirable to carry out the powers and authorities conferred

by this chapter and the intent and purposes of it.

(b) The enumeration of these powers shall not limit or circumscribe the broad objectives and purposes of this chapter and the broad objectives of developing to the utmost, intermodal facilities and necessary and desirable related facilities or properties, in order to stimulate commercial development.

(c) Nothing herein, however, authorizes this authority or any municipality, county, or state to provide, directly or indirectly, basic local

exchange service.

**History.** Acts 1997, No. 690, § 9.

# 14-143-110. Issuance of revenue bonds — Authorization.

- (a) Authorities are authorized to use any available revenues for the accomplishment of the purposes and the implementation of the powers authorized by this chapter, including the proceeds of revenue bonds issued from time to time pursuant to the provisions of this chapter, either alone or together with other available funds and revenues.
  - (b) The amount of each issue of bonds issued may be sufficient to pay:
- (1) The costs of accomplishing the purposes for which it is being issued:

(2) The cost of issuing the bonds:

(3) The amount necessary for a reserve, if it is determined to be desirable in favorably marketing the bonds;

(4) The amount, if any, necessary to provide for debt service on the

bonds until revenues for the payment thereof are available; and

(5) Any other costs and expenditures of whatever nature incidental to the accomplishment of the specified purposes.

History. Acts 1997, No. 690, § 10.

# 14-143-111. Issuance of revenue bonds — Resolution of authority — Nature of bonds.

(a) The issuance of revenue bonds shall be by resolution of the authority.

(b) The bonds of each issue may:

(1) Be coupon bonds payable to bearer or may be registrable as to principal only or as to both principal and interest;

(2) Be in such form and denominations;

(3) Be made payable at such places within or without the state;

(4) Be issued in one (1) or more series;

(5) Bear such date or dates;

(6) Mature at such time or times, not exceeding forty (40) years from their respective dates;

(7) Bear interest at such rate or rates;

(8) Be payable in such medium of payment;

(9) Be subject to such terms of redemption; and

(10) Contain such terms, covenants, and conditions as the resolution authorizing their issuance may provide including, without limitation, those pertaining to:

(A) The custody and application of the proceeds of the bonds;

(B) The collection and disposition of revenues;

- (C) The maintenance and investment of various funds and reserves;
- (D) The imposition and maintenance of taxes, fees, rates and charges for the use of the terminal and other facilities;

(E) The nature and extent of the security;

(F) The rights, duties, and obligations of the authority and the trustee for the holders and registered owners of the bonds; and

(G) The rights of the holders and registered owners of the bonds.

(c)(1) There may be successive bond issues for the purpose of financing the same project. There may also be successive bond issues for financing the cost of reconstructing, replacing, constructing additions to, extending, improving, and equipping projects already in existence, whether or not originally financed by bonds issued under this chapter, with each successive issue to be authorized as provided by this chapter.

(2) Priority between and among issues and successive issues as to security, the pledge of revenues and lien on and security interest in the land, buildings, and facilities involved, may be controlled by the resolutions authorizing the issuance of bonds under this chapter.

(d) Subject to the provisions of this section and § 14-143-110 and §§ 14-143-112 — 14-143-118 of this chapter pertaining to registration, the bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas.

### 14-143-112. Issuance of revenue bonds — Indenture.

- (a) The resolution authorizing the bonds may provide for the execution by the authority of an indenture which defines the rights of the holders and registered owners of the bonds and provides for the appointment of a trustee for the holders and registered owners of the bonds.
- (b) Indenture may control the priority between successive issues and may contain any other terms, covenants, and conditions that are deemed desirable, including, without limitation, those pertaining to:

(1) The custody and application of the proceeds of the bonds;

(2) The collection and disposition of revenues;

(3) The maintenance of various funds and reserves;

(4) The imposition and maintenance of taxes, fees, rates and charges for the use of regional intermodal facilities and other facilities of the authority;

(5) The nature and extent of the security;

- (6) The rights, duties, and obligations of the authority and the trustee; and
  - (7) The rights of the holders and registered owners of the bonds.

History. Acts 1997, No. 690, § 12.

# 14-143-113. Issuance of revenue bonds — Price and manner sold.

The bonds may be sold for such price, including sale at a discount, and in such manner as the authority may determine by resolution.

History. Acts 1997, No. 690, § 13.

# 14-143-114. Issuance of revenue bonds — Execution.

(a)(1) The bonds shall be executed by the manual or facsimile

signatures of the chairman and secretary of the authority.

(2) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of the bonds or coupons, their signatures shall nevertheless be valid and sufficient for all purposes.

(b) The coupons attached to the bonds may be executed by the

facsimile signature of the chairman of the authority.

History. Acts 1997, No. 690, § 14.

# 14-143-115. Issuance of revenue bonds — Obligation of authority.

(a) The revenue bonds issued under this chapter shall be obligations only of the authority and shall not be general obligations of any county or municipality, or the state.

(b)(1) In no event shall the revenue bonds constitute an indebtedness of any county or municipality, or the state within the meaning of any

constitutional or statutory limitation.

(2) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this chapter and that it does not constitute an indebtedness of any county or municipality, or the state within any constitutional or statutory limitation.

(c) The principal of and interest on the bonds may be secured, to the extent set forth in the resolution or indenture securing the bonds, by a pledge of and payable from all or any part of revenues derived from the

use of facilities of the authority, including, without limitation:

(1) Revenues derived from rates and charges imposed and maintained for the use of facilities of the authority:

(2) Revenues derived from taxes or fees levied under subdivision

(a)(15) and (16) of § 14-143-109 of this chapter; and

(3) Lease rentals under leases or payments under security agreements or other instruments entered into under this chapter.

History. Acts 1997, No. 690, § 15. A.C.R.C. Notes. The punctuation in this section is incorrect or does not conis unable to correct the punctuation.

form to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission

# 14-143-116. Issuance of revenue bonds — Refunding bonds.

(a)(1) Revenue bonds may be issued under this chapter for the purpose of refunding any obligations issued under this chapter.

(2) The refunding bonds may be combined with bonds issued into a

single issue.

(b)(1) When bonds are issued under this section for refunding purposes, the bonds may either be sold or delivered in exchange for the outstanding obligations.

(2) If sold, the proceeds may be either applied to the payment of the obligations refunded or deposited in escrow for the retirement of them.

- (c)(1) All refunding bonds issued under this chapter shall, in all respects, be authorized, issued, and secured in the manner provided for other bonds issued under this chapter and shall have all the attributes of these bonds.
- (2) The resolution under which these refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the obligations refunded by them.

History. Acts 1997, No. 690, § 16.

# 14-143-117. Issuance of revenue bonds — Mortgage lien.

- (a) The resolution or indenture securing the bonds may impose a forecloseable mortgage lien upon or security interest in the facilities of the authority, or any portion thereof, and the extent of the mortgage lien or security interest may be controlled by the resolution or indenture including, without limitation, provisions pertaining to the release of all or part of the facilities subject to the mortgage lien or security interest in the event of successive issues of bonds.
- (b) Subject to the terms, conditions, and restrictions contained in the resolution or indenture, any holder of any of the bonds, or of any coupon attached thereto, or a trustee on behalf of the holders may, either at law or in equity, enforce the mortgage lien or security interest and may, by proper suit, compel the performance of the duties of the officials of the authority set forth in this chapter and set forth in the resolution or indenture.

History. Acts 1997, No. 690, § 17.

### 14-143-118. Issuance of revenue bonds — Default.

- (a)(1) In the event of a default in the payment of the principal of or interest on any bonds issued under this chapter, any court having jurisdiction may appoint a receiver to take charge of any facilities upon or in which there is a mortgage lien or security interest securing the bonds in default.
- (2) The receiver shall have the power to operate and maintain the facilities in receivership and to charge and collect taxes, fees, rates and rents sufficient to provide for the payment of any costs of receivership and operating expenses of the facilities in receivership and to apply the revenues derived from the facilities in receivership in conformity with this chapter and the resolution or indenture securing the bonds in default.
- (3) When the default has been cured, the receivership shall be ended and the facilities returned to the authority.
- (b) The relief provided for in this section shall be construed to be in addition and as supplemental to the remedies that may be provided for in the resolution or indenture securing the bonds and shall be so granted and administered as to accord full recognition to priority rights of bondholders as to the pledge of revenues from, mortgage lien on, and security interest in facilities as specified in and fixed by the resolution or indenture securing successive issues of bonds.

History. Acts 1997, No. 690, § 18. A.C.R.C. Notes. The punctuation in this section is incorrect or does not con-

form to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

# 14-143-119. Agreements to obtain funds.

Each authority may, in connection with obtaining funds for its purposes, enter into any agreement with any person, firm, or corporation including the federal government, or any agency or subdivision thereof, containing such provisions, covenants, terms, and conditions as the authority may deem advisable.

History. Acts 1997, No. 690, § 19. A.C.R.C. Notes. The punctuation in this section is incorrect or does not con-

form to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

# 14-143-120. Acquisition of property.

(a) Whenever it shall be deemed necessary by an authority, in connection with the exercise of its powers conferred in this chapter, to take or acquire any lands, structures, buildings, or other rights, either in fee or as easements, for the purposes set forth in this chapter, the authority may purchase them directly or through its agents from the owners thereof, or failing to agree with the owners, the authority may exercise the power of eminent domain, and these purposes are declared to be public uses for which private property may be taken or damaged.

(b) Should an authority elect to exercise the right of eminent domain, condemnation proceedings shall be maintained by and in the name of the authority, and it may proceed in the manner provided by the general laws of the State of Arkansas for the procedure by any county, municipality, or authority organized under the laws of this state, or by railroad corporations, as the authority may, in its discretion, elect.

History. Acts 1997, No. 690, § 20. this section is incorrect or does not con- is unable to correct the punctuation.

form to Code style. Pursuant to § 1-2-303. A.C.R.C. Notes. The punctuation in the Arkansas Code Revision Commission

# 14-143-121. Exemption from taxation.

(a) Each authority shall be exempt from the payment of any taxes or fees to the state, or any subdivision thereof, or to any office or employee of the state, or of any subdivision thereof; however, each authority shall withhold and remit state income taxes as prescribed by § 26-51-901 et seq.

(b)(1) The property of each authority shall be exempt from all local

and municipal taxes.

(2) Bonds, notes, debentures, and other evidences of indebtedness of the authority are declared to be issued for a public purpose and to be public instrumentalities and, together with interest thereon, shall be exempt from all state, county, and municipal taxes, including, but without limitation, income, inheritance and estate taxes.

History. Acts 1997, No. 690, § 21.

### 14-143-122. Use of surplus funds.

(a) If an authority should realize a surplus, whether from operating the intermodal facilities and other facilities or leasing it or them for operation, over and above the amount required for the maintenance, improvement, and operation of the intermodal facility and other facilities and for meeting all required payments on its obligations, it shall set aside the reserve for future operations, improvements, and contingencies as it shall deem proper and shall then apply the residue of the surplus, if any, to the payment of any recognized and established obligations not then due.

(b) After all the recognized and established obligations have been paid off and discharged in full, the authority shall, at the end of each fiscal year, set aside the reserve for future operations, improvements, and contingencies as prescribed in subsection (a) of this section and then pay the residue of the surplus, if any, to the counties and municipalities in direct proportion to their financial contribution, provided that no such distribution of said residue of the surplus shall violate United States law or the terms of any deed, grant agreement or

other agreement with the United States.

History. Acts 1997, No. 690, § 22.

A.C.R.C. Notes. The punctuation in this section is incorrect or does not con-

form to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

# 14-143-123. Public and private contributions.

(a) Contributions may be made to authorities from time to time by the counties, municipalities, and the state and persons, firms, or

corporations that shall desire to do so.

(b) In order to afford maximum opportunities for contributions, the agreement provided for under § 14-143-103 of this chapter may be treated as a cooperative agreement under the provisions of the Interlocal Cooperation Act, § 25-20-101 et seq., and may contain language enabling the agreement to be treated as a formal compact under §§ 14-165-201 — 14-165-204 in which case the authority shall hold title to property in its powers and capacity as a public corporation rather than as a commission-trustee as provided in §§ 14-165-201 — 14-165-204, or may be treated as a less formal arrangement for the cooperative use of industrial development bond funds, all to the end that the counties and municipalities may contribute to the authority funds derived from general obligation bonds under Arkansas Constitution Amendments 13 and 49, from revenue bonds under §§ 14-164-201 — 14-164-206 from other available sources, and may contribute funds derived from a combination of these sources.

History. Acts 1997, No. 690, § 23.
A.C.R.C. Notes. The punctuation in this section is incorrect or does not con-

form to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

# 14-143-124. Accounts and reports.

(a)(1) All funds received by an authority shall be deposited in such banks as the authority may direct and shall be withdrawn therefrom in such manner as the authority may direct.

(2)(A) Each authority shall keep strict account of all of its receipts and expenditures and shall each quarter make a report to those

participating entities which have made contributions.

(B)(i) The report shall contain an itemized account of its receipts and disbursements during the preceding quarter.

(ii) The report shall be made within sixty (60) days after the

termination of the quarter.

- (b)(1) Within sixty (60) days after the end of each fiscal year, each authority shall cause an annual audit to be made by an independent certified public accountant and shall file a copy of the resulting audit report with each of the governing bodies participating in the authority. This audit shall contain an itemized statement of its receipts and disbursements for the preceding year.
- (2) The books, records, and accounts of each authority shall be subject to audit and examination by any proper public official or body in the manner provided by law.
- (c) The agreement provided for in § 14-143-103 of this chapter may also provide for each authority to furnish the participating governing bodies copies of its annual budget for examination and approval.

History. Acts 1997, No. 690, § 24.

# 14-143-125. County, municipal, and state authority.

(a) Counties and municipalities are authorized and empowered to appoint members of the authorities and counties, municipalities, and the state are authorized and empowered to contribute to the cost of acquiring, constructing, equipping, maintaining, and operating the regional intermodal facilities and appurtenant facilities.

(b) Counties, municipalities, and the state are authorized and empowered to transfer and convey to the authorities property of any kind acquired by the counties, municipalities, and the state for transporta-

tion purposes.

History. Acts 1997, No. 690, § 25.

# 14-143-126. Lease of facilities.

(a) Each authority may lease its intermodal facilities and all or any part of its appurtenances and facilities to any available lessee at such rental and upon such terms and conditions as the authority shall deem proper.

(b) Leases shall be for some purpose associated with intermodal

transportation activities.

History. Acts 1997, No. 690, § 26.

### 14-143-127. Sale of assets.

In the event the board shall so determine, any authority may make sale of all or any part of its properties and assets and distribute the proceeds among the participating municipalities and the counties in the proportion each such unit contributed to the authority's funds or otherwise in the manner set forth in the agreement establishing the authority, provided, no sale of properties or assets and no distribution of proceeds of such sale shall be done in a manner which violates United States law or the terms of any deed, grant agreement, or other agreement with the United States.

History. Acts 1997, No. 690, § 27.

### 14-143-128. Authorized investors.

Any municipality, or any board, commission, or other authority duly established by ordinance of any municipality, or the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any such municipality, or the board of trustees of any retirement system created by the General Assembly of the State of Arkansas, may, in its discretion, invest any of its funds not immediately needed for its purposes, in bonds issued under the provisions of this chapter, and bonds issued under the provisions of this chapter shall be eligible to secure the deposit of public funds.

History. Acts 1997, No. 690, § 28.

### 14-143-129. Construction.

This chapter shall be liberally construed to accomplish its intent and purposes and shall be the sole authority required for the accomplish-

ment of its purpose. To this end:

(1) It shall not be necessary to comply with the general provisions of other laws dealing with public facilities, their acquisition, construction, leasing, encumbering, or disposition, except to the extent provided for in § 14-206-101, et. seq., § 14-207-101, et seq., and § 18-15-501, et seq.; and

(2) Section 15-5-303 shall not apply.

History. Acts 1997, No. 690, § 29. A.C.R.C. Notes. The punctuation in this section is incorrect or does not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

### **CHAPTERS 144-151**

[Reserved]

# SUBTITLE 9. PUBLIC FACILITIES IMPROVEMENT DISTRICTS

### CHAPTERS 152-161°

[Reserved]

# SUBTITLE 10. ECONOMIC DEVELOPMENT AND TOURISM GENERALLY

# **CHAPTER 162 GENERAL PROVISIONS**

[Reserved]

# CHAPTER 163 INDUSTRIAL COMMISSIONS

#### SUBCHAPTER.

- 1. General Provisions. [Reserved.]
- 2. CITIES OF THE FIRST CLASS IN COUNTIES OF 105,000 OR MORE.

Cross References. Authority of cities Tax to aid industries, Ark. Const. and towns to aid new industries, § 14-54- Amend, 18.

Local Government Bond Act of 1985. § 14-164-301 et seq.

### SUBCHAPTER 1 — GENERAL PROVISIONS

# [Reserved]

### Subchapter 2 — Cities of the First Class in Counties of 105,000 or More

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Effective Dates. Acts 1970 (Ex. Sess.). No. 60, § 5: Mar. 13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1975, No. 225, § 26: became law without Governor's signature, Feb. 19, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is

essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

### 14-163-201. Title.

This subchapter shall be referred to and may be cited as the "Amendment No. 18 Implementing Act of 1963."

**History.** Acts 1963, No. 206, § 1; A.S.A. 1947, § 19-3101.

### 14-163-202. Legislative intent.

(a) This subchapter is intended to supplement all constitutional provisions and other legislation designed to accomplish the securing and developing of factories, industries, and river transportation.

(b) When applicable, in accordance with the provisions of this subchapter, it may be utilized as an alternative notwithstanding any constitutional provision or any other legislation authorizing the issuance of bonds for the same or similar purposes.

**History.** Acts 1963, No. 206, § 10; A.S.A. 1947, § 19-3108.

### 14-163-203. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "City" means any city of the first class located in a county having not less than one hundred five thousand (105,000) population;

(2) "Purposes and powers" means those purposes and powers specified in this subchapter, including particularly those purposes and powers enumerated in § 14-163-206.

**History.** Acts 1963, No. 206, §§ 2, 4; A.S.A. 1947, §§ 19-3102, 19-3104.

### 14-163-204. Construction.

This subchapter shall be liberally construed to accomplish its purposes.

**History.** Acts 1963, No. 206, § 10; A.S.A. 1947, § 19-3108.

# 14-163-205. Appointment of commissioners.

(a)(1) The respective commissioners authorized by Arkansas Constitution, Amendment 18, shall be appointed by the appointing boards specified in it.

(2) The term of each commissioner shall be for six (6) years from the date of his appointment, and he shall serve for such a term and thereafter until his successor shall be appointed and qualified.

(b) Before entering upon his duties, each commissioner shall take and subscribe and file in the office of the circuit clerk of the county an oath to:

- (1) Support the Constitution of the United States and the Constitution of the State of Arkansas; and
- (2) Faithfully perform the duties of the office upon which he is about to enter.
- (c)(1) At the expiration of the term of each commissioner, the applicable appointing board shall appoint a successor or may reappoint the same member to another term.

- (2) Any vacancy arising for any reason other than the expiration of the term of a particular commissioner shall be filled by the applicable appointing board, and the person appointed to fill the vacancy shall serve for the unexpired portion of the term of the resigning or vacating member.
- (d)(1) The commissioners shall not be charged with the responsibility to execute or perform the purposes and powers specified in this subchapter.

(2) The duties and responsibilities of the commissioners shall be those specified in Arkansas Constitution, Amendment 18.

**History.** Acts 1963, No. 206, §§ 4, 5; A.S.A. 1947, §§ 19-3104, 19-3105.

A.C.R.C. Notes. As enacted, Acts 1963, No. 206, § 4, provided that the commissioners would have the powers and duties set forth in § 5 of that act. However, the Supreme Court of Arkansas in McDonald v. Bowen, 250 Ark. 1049, 468 S.W.2d 765

(1971) held that Acts 1963, No. 206, § 5, was unconstitutional in that it stripped the commissioners of the powers set forth in Ark. Const. Amend. 18. Acts 1963, No. 206, §§ 4 and 5 have, therefore, been rewritten in conformity with the holding of McDonald v. Bowen.

### **CASE NOTES**

Cited: City of Little Rock v. Raines, 241 Ark. 1071, 411 S.W.2d 486 (1967).

# 14-163-206. Use of tax and bond proceeds — Purposes and powers generally.

(a) The purposes for which the proceeds of the special tax or the proceeds of bonds issued under the provisions of this subchapter may be expended and the authority and powers that may be exercised in connection with the accomplishment of these purposes are the following:

(1) The establishment, development, and improvement of harbors, ports, river-rail and barge terminals, and any facilities or improvements necessary or desirable in connection with the utilization and

operation of them within and adjacent to any city;

(2) The acquisition by gift, purchase, negotiation, or condemnation under the power of eminent domain, the construction, reconstruction, extension, equipment, owning, leasing, with or without options to purchase and with or without options to extend or renew, and the selling, the contracting concerning, or otherwise dealing in, with, or disposing of, any lands, buildings, machinery, or other personal property and facilities of any and every nature whatever necessary or desirable in connection with the establishing, developing, and improving of harbors, ports, and river-rail and barge terminals, and the improving of such portions of waterways as may be necessary or desirable in connection with them, which waterways are not within the exclusive jurisdiction of the federal government;

(3) The fostering and stimulation of the shipment of freight and commerce through ports, harbors, and river-rail and barge terminals,

whether originating within or without the State of Arkansas, including the investigation, handling, and dealing with matters pertaining to all

transportation rates and rate structures affecting them;

(4) The acquisition by gift, purchase, negotiation, or condemnation under the power of eminent domain, the construction, reconstruction, extension, equipment, owning, leasing, with or without options to purchase and with or without options to extend or renew, and the selling, the contracting concerning, or otherwise dealing in, with, or disposing of, any lands, buildings, machinery, or other personal property and facilities of any and every nature whatever necessary or desirable in connection with the securing and developing of factories, industries, river transportation, industrial sites, and facilities for them within and adjacent to any city;

(5) The acquisition of such rights-of-way, sites and lands, or any interest in them, as may be necessary or desirable, and the construction, reconstruction, extension, and equipment on them of such improvements of every nature whatever as may be necessary or desirable in connection with the securing and developing of factories, industries, river transportation, industrial sites, and facilities for them within and adjacent to any city, including by example and without limiting the

generality of the foregoing:

(A) Storm drainage facilities;

(B) Streets, roads, and highways, including, without limitation, existing streets, roads, and highways, which will serve, in whole or in part, the transportation needs of any such factories, industries, river transportation, and other facilities:

(C) Fire stations and fire fighting facilities, water facilities, sewer facilities, and any other public facilities of any nature whatever to serve, in whole or in part, the needs of any such factories, industries,

river transportation, and other facilities;

- (D) The making of cash or noncash grants-in-aid or the making available of any funds from any tax levied under this subchapter or from the proceeds of any bond issued under this subchapter to the State of Arkansas, or any department, agency, commission, committee, or authority of it, any political subdivision of the state, or any department, agency, commission, committee, or authority of any political subdivision of the state, the federal government, or any department or agency of the federal government. This includes, without limitation, any housing authority or any city or metropolitan or other port authority, or any similar agencies, so long as the cash or noncash grant-in-aid or such funds are necessary or desirable for the accomplishment of any of the purposes authorized by this subchapter;
- (6) The power to appoint, employ, and dismiss, at pleasure, agents

and employees and to fix and pay their compensation;

(7) The payment of such expenses and costs, and the making of such other expenditures of every nature whatever, as may be necessary or desirable in the accomplishment of the authorized purposes and powers:

(8) The accomplishment of any other public purpose, except those excluded by Arkansas Constitution, Amendment 18, constituting an authorized action or activity of a city of the first class under constitutional and statutory provisions of the State of Arkansas, including, without limitation, the making of secured loans to persons, corporations, or associations for the operation of factories and industries upon such terms and conditions as shall be specified and agreed upon from time to time by the governing body of any city;

(9) The power to do any and all actions and things of whatever nature necessary or incidental to the accomplishment of the purposes specified by Arkansas Constitution, Amendment 18 and by this subchapter, including, without limitation, those that may exist by virtue of any other constitutional or statutory provision, whether or not specifi-

cally enumerated.

(b) Nothing in this subchapter shall be construed as including within the purposes and powers specified by this subchapter the power or authority to use the power of eminent domain or to issue or sell bonds or to use the proceeds of these bonds or of any special tax levied under the provisions of this subchapter to purchase, condemn, or otherwise acquire any plant, property, transmission, or distribution facility owned or operated by any regulated public utility as defined in § 23-1-101.

**History.** Acts 1963, No. 206, § 3; A.S.A. 1947, § 19-3103.

# 14-163-207. Levy of tax.

(a) Any city may levy, by ordinance of its governing body, from time to time a special tax, not exceeding in the aggregate five (5) mills on the dollar of the assessed valuation of all taxable real and personal property in the city, for the purposes specified in § 14-163-206 when petitioned to do so by at least ten percent (10%) of the owners of real property in the city and after approval of a majority of the electors of the city voting on the question submitted at a special election called for the purpose.

(b)(1) Each petition for a special tax shall be directed to the govern-

ing body of the city and filed with the city clerk.

(2) A petition shall contain at least the following information:

- (A) The purposes for which the tax proceeds are to be expended, named by general designation as set forth in this subchapter, if these expenditures are to be made for less than all of the authorized purposes and, if not, a statement that the proceeds are to be expended for any or all authorized purposes as the governing body of the city in its discretion shall determine from time to time;
- (B) The amount of the tax in terms of mills which may be for all or any portion of the total authorized five (5) mills not theretofore voted;
  - (C) The number of years for which the tax is to be collected; and
- (D) If there is to be a bond issue, the total amount of bonds to be voted and the length of time in years over which the bonds are to mature.

(c)(1) Upon the filing of the petition, the city clerk shall publish a notice one (1) time in a newspaper of general circulation in the city which need state only that a petition has been filed under the provisions of this subchapter requesting the levying of a special tax under Arkansas Constitution, Amendment 18, and stating the time, date, and place that a hearing will be held to determine the sufficiency of the petition.

(2) The notice must be published at least ten (10) days prior to the

date of the hearing.

(d)(1) At the time, date, and place specified in the notice, the governing body of the city shall hold the hearing and shall determine and make a finding as to whether or not the petition is signed by at least

ten percent (10%) of the owners of real property in the city.

(2)(A)(i) If the governing body finds that the petition is signed by the requisite owners of real property, it shall adopt an ordinance setting forth its finding and calling a special election to be held in the city on the date specified in the ordinance, which shall not occur earlier than thirty (30) days after the passage of the ordinance.

(ii) The ordinance shall be published one (1) time.

(B) The finding that the petition is sufficient shall be conclusive unless attacked in the courts within thirty (30) days after the date of publication of the ordinance.

(C)(i) The ordinance shall contain at least the information set forth in this section as required information to be included in the petition.

(ii) In addition, the ordinance shall specify the form of the ballot to be submitted to the electors.

(e)(1) The ballot shall submit the question of voting for or against an industrial tax in the amount specified by the petition.

(2) In addition, if the bonds are to be voted, the statement of the measure on the ballot must, by general language, advise the electors of:

(A) The amount of the bond issue;

(B) The length of time in years over which the bonds are to mature; and

(C) The fact that the industrial tax, if voted, will be a continuing annual tax until the principal of and interest on the bonds are paid.

(f)(1) The election shall be held and conducted, the vote canvassed, and the results declared in the manner provided for municipal elections, except as may be otherwise expressly provided.

(2) Notice of the election shall be given by the mayor of the city by advertisement in a newspaper of general circulation within the city one (1) time a week for four (4) consecutive weeks with the last publication to be not less than ten (10) days prior to the date of the election.

(3) Only qualified electors of the city shall have the right to vote.

(4) The results of the election shall be proclaimed by the mayor by proclamation published one (1) time in a newspaper of general circulation in the city and shall be conclusive unless attacked in the courts within thirty (30) days after the date of publication of the proclamation.

(g) The tax shall be levied by the governing body of the city and extended on the tax books and collected as general city taxes are extended and collected.

**History.** Acts 1963, No. 206, §§ 2, 6; A.S.A. 1947, §§ 19-3102, 19-3106.

#### **CASE NOTES**

Continuing Levy.

The legislature could authorize the electorate to approve a continuing levy to

support a long-term bond issue. McDonald v. Bowen, 250 Ark. 1049, 468 S.W.2d 765 (1971).

### 14-163-208. Bonds — Issuance generally.

(a) If approved by the electors at a special election, the governing body of the city is authorized and empowered to issue bonds and to use the proceeds thereof for accomplishing the purposes and powers, either alone or together with other available funds and revenues, including the proceeds of any special tax theretofore levied and being collected under the provisions of Arkansas Constitution, Amendment 18 and the provisions of this subchapter.

(b) Each issuance of bonds shall be authorized by ordinance of the

governing body of the city.

**History.** Acts 1963, No. 206, § 7; 1970 § 4; 1981, No. 425, § 4; A.S.A. 1947, § 19-(Ex. Sess.), No. 60, §§ 1, 2; 1975, No. 225, 3107.

#### **CASE NOTES**

ANALYSIS

Elections.
Long-term issue.
Purposes.

#### Elections.

A suit seeking to enjoin a city from holding an election concerning a bond issue could not be dismissed for lack of a justiciable issue, for, if the election was in fact an illegal election, the expenses of holding the election would constitute an illegal action for which the constitution provides a remedy by injunction. McDonald v. Bowen, 250 Ark. 1049, 468 S.W.2d 765 (1971).

Long-term Issue.

The legislature could authorize the elec-

torate to approve a continuing levy to support a long-term bond issue. McDonald v. Bowen, 250 Ark. 1049, 468 S.W.2d 765 (1971).

### Purposes.

Where the purposes set out in a petition for a special election for a tax levy were for the construction of a convention center, improved river transportation facilities, and to provide capital for a nonprofit small business investment company to aid in the financing of industries when private financing was not available, the purposes fell within the scope of Ark. Const. Amend. 18. McDonald v. Bowen, 250 Ark. 1049, 468 S.W.2d 765 (1971).

# 14-163-209. Bonds — Amount — Pledge and application of revenues.

(a) Bonds may be issued from time to time, and each issue shall be in the principal amount sufficient, together with other funds then available, for the accomplishment of the particular purpose for which the bonds are voted, including, without limitation:

(1) All costs and expenditures incurred in connection with the

accomplishment of the particular purpose or purposes;

(2) All costs and expenditures incurred in connection with the issuance of the bonds;

(3) The amount necessary for a reserve, if deemed desirable by the

governing body;

(4) The amount necessary to provide for debt service on the bonds until tax proceeds or other revenues are received in sufficient amounts for their payment as they become due and payable; and

(5) Any other costs necessarily incidental thereto.

(b) In this regard, if the particular purpose or purposes to be accomplished, in whole or in part, out of the proceeds of the bonds will be revenue producing, any available revenues may be pledged and applied to the payment of the principal of and interest on the bonds, and provision may be made for the suspension of the collection of all or part of the special continuing annual tax voted for the payment of the principal of and interest on the bonds, upon such terms and conditions as shall be specified by the governing body in the ordinance authorizing and directing the issuance of the bonds.

**History.** Acts 1963, No. 206, § 7; 1970 § 4; 1981, No. 425, § 4; A.S.A. 1947, § 19-(Ex. Sess.), No. 60, §§ 1, 2; 1975, No. 225, 3107.

# 14-163-210. Bonds — Terms and conditions.

(a) The bonds shall be coupon bonds payable to bearer, but may be made subject to registration as to principal only.

(b) As the authorizing ordinance may provide, the bonds may:

(1) Be in one (1) or more series;

(2) Bear such date or dates;

(3) Mature at such time or times, not exceeding thirty-five (35) years from their respective dates;

(4) Bear interest at such rate or rates;

(5) Be in such form;

- (6) Be executed in such manner;
- (7) Be payable in such medium of payment, at such place or places;

(8) Be subject to such terms of redemption; and

(9) Contain such terms, covenants, and conditions, including without limitation, those pertaining to:

(A) The custody and application of the proceeds of the bonds;

- (B) The collection and disposition of revenues and tax collections;
- (C) The maintenance and investment of various funds and reserves;

- (D) The nature and extent of the security;
- (E) The rights, duties, and obligations of the city and of the trustee, if a trustee is designated, for the holders and registered owners of the bonds; and
  - (F) The rights of the holders or registered owners of the bonds.
- (c) Bonds issued under this subchapter shall have all the qualities of negotiable instruments under the negotiable instruments laws of the State of Arkansas.

**History.** Acts 1963, No. 206, § 7; 1970 § 4; 1981, No. 425, § 4; A.S.A. 1947, § 19-(Ex. Sess.), No. 60, §§ 1, 2; 1975, No. 225, 3107.

### 14-163-211. Bonds — Trust indenture.

Each ordinance authorizing the issuance of bonds may provide for the execution of an indenture defining the rights of the holders and registered owners of the bonds and providing for the appointment of a trustee for the holders and registered owners of the bonds and containing such other terms, covenants, and conditions as authorized in this section to be included in the ordinance.

**History.** Acts 1963, No. 206, § 7; 1970 § 4; 1981, No. 425, § 4; A.S.A. 1947, § 19-(Ex. Sess.), No. 60, §§ 1, 2; 1975, No. 225, 3107.

### 14-163-212. Bonds — Sale.

Bonds issued under this subchapter shall be sold at public sale after twenty-days' advertisement in a newspaper having a bona fide circulation in the city. They may be sold for such price, including, without limitation, sale at a discount, as the governing body of the city shall determine.

**History.** Acts 1963, No. 206, § 7; 1970 § 4; 1981, No. 425, § 4; A.S.A. 1947, § 19-(Ex. Sess.), No. 60, §§ 1, 2; 1975, No. 225, 3107.

# 14-163-213. Bonds, coupons — Execution — Seal.

(a)(1) Bonds issued under this subchapter may be executed by the manual or fascimile signature of the mayor of the city but must contain the manual signature of the city clerk of the city.

(2) Coupons attached to the bonds shall be executed by the facsimile

signature of the mayor of the city.

(b) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before delivery of the bonds or coupons, their signatures shall nevertheless be valid and sufficient for all purposes.

(c) The bonds shall be sealed with the seal of the city.

**History.** Acts 1963, No. 206, § 7; 1970 § 4; 1981, No. 425, § 4; A.S.A. 1947, § 19-(Ex. Sess.), No. 60, §§ 1, 2; 1975, No. 225, 3107.

### 14-163-214. Bonds — Conversion.

Bonds issued under this subchapter may be sold with the privilege of conversion to an issue bearing a lower rate or rates of interest, upon such terms and subject to such conditions as the governing body of the city shall determine. However, under no circumstances shall the city receive less or pay more than it would receive and pay if the bonds were not converted, and any conversion shall be subject to the approval of the governing body of the city.

**History.** Acts 1963, No. 206, § 7; 1970 § 4; 1981, No. 425, § 4; A.S.A. 1947, § 19-(Ex. Sess.), No. 60, §§ 1, 2; 1975, No. 225, 3107.

### 14-163-215. Bonds — Tax exemption.

Bonds issued under the provisions of this subchapter shall be exempt from all state, county, and municipal taxes, and this exemption shall include income, inheritance, and estate taxes.

**History.** Acts 1963, No. 206, § 7; 1970 (Ex. Sess.), No. 60, §§ 1, 2; 1975, No. 225, § 4; 1981, No. 425, § 4; A.S.A. 1947, § 19-3107.

A.C.R.C. Notes. Language excluding property taxes from the exemption provided by this section was deleted pursuant to Ark. Const. Amend. 57, § 1 and § 26-3-302. The Arkansas Const. Amend. 57, § 1 provides that the General Assembly may classify intangible personal property

for assessment at lower percentages of value than other property and may exempt one or more classes of intangible personal property from taxation, or may provide for the taxation of intangible personal property on a basis other than ad valorem. Section 26-3-302 exempts all intangible personal property in this state from all ad valorem tax levies of counties, cities, and school districts in the state as of January 1, 1976.

# 14-163-216. Refunding bonds.

(a) Bonds may be issued under this subchapter for the purpose of refunding any bonds theretofore issued under this subchapter.

(b) Refunding bonds may be issued alone or combined with bonds issued under this subchapter into a single issue for the purpose of refunding outstanding bonds and for the purpose of accomplishing any authorized purpose or power.

(c)(1) When refunding bonds are issued, the bonds may be either sold or delivered in exchange for the outstanding bonds being refunded.

(2) If sold, the proceeds may either be applied to the payment of the bonds being refunded, or the proceeds may be deposited in escrow for the retirement of them.

(d) All refunding bonds shall be, in all respects, authorized, issued, and secured in the manner provided for other bonds issued under this subchapter and shall have all the attributes of these bonds.

(e) If refunding bonds alone are being issued which have the same maturity years as the bonds being refunded and to which the same special continuing annual tax theretofore voted for the bonds being refunded is to be pledged, no petition need be filed and no election need

be held prior to the governing body authorizing the issuance of the refunding bonds by ordinance as prescribed in this subchapter.

History. Acts 1963, No. 206, § 7; 1970 § 4; 1981, No. 425, § 4; A.S.A. 1947, § 19-(Ex. Sess.), No. 60, §§ 1, 2; 1975, No. 225, 3107.

### 14-163-217. Investment in bonds authorized.

Bonds issued under this subchapter shall be eligible to secure deposits of all public funds and shall be legal for the investment of bank, insurance company, and retirement funds.

**History.** Acts 1963, No. 206, § 7; 1970 § 4; 1981, No. 425, § 4; A.S.A. 1947, § 19-(Ex. Sess.), No. 60, §§ 1, 2; 1975, No. 225, 3107.

### CHAPTER 164

### INDUSTRIAL DEVELOPMENT BONDS

#### SUBCHAPTER.

- 1. General Provisions. [Reserved.]
- 2. Municipalities and Counties Industrial Development Revenue Bond Law.
- 3. Local Government Bond Act.
- 4. Local Government Capital Improvement Revenue Bond Act.
- 5. ECONOMIC AND INDUSTRIAL DEVELOPMENT REVENUE BOND LAW.
- 6. COMPACTS BY COUNTIES FOR RAILROAD OPERATIONS.
- 7. EXEMPTIONS FROM AD VALOREM TAXATION.

#### RESEARCH REFERENCES

business as factor affecting validity and 1096. substantive requisites of issuance, by state or local governmental agencies, of economic development bonds in support of Serbonian Bog, 39 Ark. L. Rev. 499.

ALR. Adverse impact upon existing private business enterprise. 39 ALR 4th

Ark. L. Rev. Comment, Municipal Bonds and Amendment 62: Clearing Up a

### Subchapter 1 — General Provisions

# [Reserved]

### Subchapter 2 — Municipalities and Counties Industrial Development REVENUE BOND LAW

SECTION. 14-164-201. Title. 14-164-202. Purpose. 14-164-203. Definitions. 14-164-204. Construction. SECTION.

14-164-205. Authority to develop indus-

14-164-206. Authority to issue revenue bonds.

SECTION.

14-164-207. Applicability of §§ 14-164-208 — 14-164-216, and 14-164-218.

14-164-208. Adoption of bond ordinance or order.

14-164-209. Bonds — Issuance — Authorizing resolution.

14-164-210. Bonds — Terms and conditions.

14-164-211. Bonds — Trust indenture, lease, etc.

14-164-212. Bonds and coupons — Execution.

14-164-213. Bonds — Sale.

SECTION.

14-164-214. Bonds — Conversion.

14-164-215. Bonds — Successive issues.

14-164-216. Bonds — Priority among issues.

14-164-217. Bonds — Payment.

14-164-218. Bonds — Interim financing.

14-164-219. Refunding bonds.

14-164-220. Statutory mortgage lien.

14-164-221. Default in payment of bonds.

14-164-222. Bonds — Tax exemption.

14-164-223. Public investment.

14-164-224. No utility acquisition by municipality.

A.C.R.C. Notes. Acts 1991, No. 629, § 8, which amended § 8-5-612, provided: "For purposes of any other law, including, without limitation, § 14-164-201 et seq., the term 'facilities' or a similar term shall include a wastewater project or solid waste disposal project as those terms are defined in this subchapter, so that any law adopted authorizing the issuance of industrial development bonds, industrial development revenue bonds, or similar evidences of indebtedness shall be available for utilization in connection with a privatization project."

Publisher's Notes. Acts 1985, No. 945, confirmed and continued the authority of municipalities and counties to issue industrial development revenue bonds pursuant to Acts 1960 (Ex. Sess.), No. 9.

**Preambles.** Acts 1960 (Ex. Sess.), No. 9 contained a preamble which read: "Whereas, the people of the State of Arkansas have expressed themselves in favor of a more effective program of industrial development by their adoption of Amendment No. 49 [repealed] to the Arkansas Constitution; and

"Whereas, it is desirable to implement and supplement the provisions of said Amendment No. 49 [repealed] to the end of carrying out the broadest and most aggressive possible industrial development program; now, therefore..."

Effective Dates. Acts 1960 (Ex. Sess.), No. 9, § 16: approved Jan. 21, 1960. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that the State of Arkansas does not have an adequate program for the industrial development of the

State and the financing thereof; that on account of such inadequate program the State of Arkansas has been unable to provide for its inhabitants maximum opportunities in industry; that on account thereof the State of Arkansas and municipalities and counties therein have lost certain industries that might otherwise have been obtained; that unless an adequate program for the industrial development of the State is immediately undertaken the State of Arkansas will suffer immediate and irreparable further loss in opportunities for industrial expansion and job opportunities for its inhabitants; and that only by giving immediate effect to this act can such conditions be alleviated. An emergency, therefore, is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage."

Acts 1961, No. 48, § 7: approved Feb. 6, 1961. Emergency clause provided: "It is hereby found and declared by the General Assembly that the providing for the citizens and inhabitants of the State of Arkansas of maximum opportunities in industry is essential to the public health, safety and welfare; that the provisions of this act are immediately needed for the accomplishment of an adequate program for industrial development of the State of Arkansas in order that the State of Arkansas not suffer irreparable further loss in opportunities for industrial expansion and job opportunities for its citizens and inhabitants; and that only by giving immediate effect to this act can unemployment existing because of inadequate industrial expansion and inadequate job opportunities be successfully alleviated, and new employment, increased payrolls and other benefits flowing from industrial expansion be accomplished. It is, therefore, declared that an emergency exists and this act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage."

Acts 1963, No. 231, § 4: approved Mar. 13, 1963. Emergency clause provided: "It is hereby found and declared by the General Assembly that the providing for the citizens and inhabitants of the State of Arkansas of maximum opportunities in industrial development is essential to the public health, safety and welfare; that the provisions of this act are immediately needed for the accomplishment of an adequate program for industrial developments in order that the State of Arkansas and its citizens not suffer irreparable further loss in opportunities for industrial expansion, additional employment and additional payrolls; and that only by giving immediate effect to this act can these public purposes be realized to the fullest possible extent. It is, therefore, declared that an emergency exists and this act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage."

Acts 1965, No. 383, § 5: approved Mar. 19, 1965. Emergency clause provided: "It is hereby found and declared by the General Assembly that the providing for the citizens and inhabitants of the State of Arkansas of maximum opportunities in industrial development is essential to the public health, safety and welfare; that the provisions of this act are immediately needed for the accomplishment of an adequate program for industrial development in order that the State of Arkansas and its citizens not suffer irreparable further loss and opportunities for industrial expansion, additional employment and additional payrolls; and that only by giving immediate effect to this act can these public purposes be realized to the fullest possible extent. It is, therefore, declared that an emergency exists and this act being immediately necessary for the preservation of the public peace, health and

safety shall take effect and be in force from and after its passage."

Acts 1968 (1st Ex. Sess.), No. 16, § 2: approved Feb. 15, 1968. Emergency clause provided: "It is hereby found and declared that industrial development revenue bond financing under Act No. 9 is an essential part of the present industrial development program of the State of Arkansas and its usefulness is in jeopardy because of current high interest rates. This situation can be alleviated by increasing the maximum permissible interest rate from 6% per annum to 7% per annum, and since industrial development is essential to the public welfare, it is necessary that the increased maximum go into effect immediately. Therefore, an emergency is declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage."

Acts 1968 (1st Ex. Sess.), No. 52, § 4: Feb. 27, 1968. Emergency clause provided: "The General Assembly finding that great care is immediately necessary in approving industrial revenue bonds issued in the industrial development of the State and that only by this act can more adequate control be made immediately available, an emergency therefore, is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage

and approval."

Acts 1969, No. 121, § 2: approved Feb. 25, 1969. Emergency clause provided: "It is hereby found and declared that industrial development revenue bond financing under Act No. 9 is an essential part of the present industrial development program of the State of Arkansas and its usefulness is in jeopardy because of current high interest rates. This situation can be alleviated by increasing the maximum permissible interest rate from 7% per annum to 8% per annum, and since industrial development is essential to the public welfare, it is necessary that the increased maximum go into effect immediately. Therefore, an emergency is declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage."

Acts 1970 (Ex. Sess.), No. 36, § 4: Mar.

13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1971, No. 208, § 5: Mar. 2, 1971. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that the securing and developing of industry on the best terms obtainable and upon terms and under conditions competitive with those made available by other states is essential to the continued economic growth and development of this State, with its resulting economic and other benefits to this State and her people. and the amendment made by this Act are necessary for the accomplishment of these purposes. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in effect upon its passage and approval."

Acts 1975, No. 221, § 5: became law without Governor's signature, Feb. 19, 1975. Emergency clause provided: "In order to market industrial development revenue bonds on the most favorable basis a greater degree of flexibility must be provided with reference to the security for such bonds. This Act is immediately necessary for the providing of that flexibility and for the maximum realization of the public benefits resulting from such change. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 773, § 3: Apr. 6, 1979. Emergency clause provided: "It is hereby found and declared that there is great need for clarifying the term 'industry' in Act 9 so that the people of the State of Arkansas can benefit from full industrial expansion and the accompanying job opportunities, new employment, increased payrolls and other benefits flowing from industrial expansion. Therefore, an emergency is hereby declared to exist, and this Act, being immediately necessary for the protection of the public peace, health and safety, shall take effect immediately upon

its passage and approval."

Acts 1981, No. 4, § 8: Jan. 28, 1981. Emergency clause provided: "It has been found and it is hereby declared that certain provisions of Act No. 9 of the First Extraordinary Session of the Sixty-Second General Assembly of the State of Arkansas need to be clarified and modified in order to permit the effective accomplishment of the purposes of Act No. 9 and the provisions of this Act are necessary therefor. With regard to interest rates, the limits presently contained in Act No. 9 are unnecessary because of the limits contained in other laws and serve to defeat the purpose of Act No. 9. Unless the clarification and modifications to be effected by this Act are made, some useful and needed projects may not be undertaken. with the resulting failure to realize the intended and needed economic benefits. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in force upon its passage and approval."

Acts 1981, No. 503, § 6: Mar. 16, 1981. Emergency clause provided: "It has been found and it is hereby declared that Arkansas law concerning procedures for authorizing the issuance of revenue bonds for the securing and developing of industry must be clarified immediately in order to permit the continued issuance of such bonds in furtherance of the State's industrial development program. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in force upon its passage and approval."

Acts 1987, No. 1020, § 4: Apr. 14, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case Ricarte v. State, CR 86-31, a question has arisen over the validity of Act 1239 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

#### RESEARCH REFERENCES

**Ark. L. Notes.** Gitelman, The Arkansas Supreme Court and Municipal Revenue Bonds, 1985 Ark. L. Notes 27.

Ark. L. Rev. Mechanic's Liens on

Project Financed by Act 9, 28 Ark. L. Rev. 280

UALR L.J. Legislative Survey, Bonds, 8 UALR L.J. 551.

### **CASE NOTES**

ANALYSIS

Constitutionality. Conflict of laws. Elections. Implied repeal.

Constitutionality.

This subchapter, authorizing municipalities and counties to engage in activity and issue bonds for the purpose of alleviating unemployment in the area, is not contrary to the Arkansas Constitution, since such activity constitutes a public purpose. Wayland v. Snapp, 232 Ark. 57, 334 S.W.2d 633 (1960).

#### Conflict of Laws.

This subchapter authorizing a city to construct an industrial facility for the purpose of securing and developing industry in the area and, in particular § 14-164-204, enacted in 1971, providing that this subchapter should be liberally construed and that projects under this subchapter did not have to comply with other laws dealing with public facilities, were in conflict with § 22-9-301 et seq., enacted in 1969, requiring that the prevailing minimum wage shall be paid to workers involved in projects constructed for public use; accordingly, § 14-164-204, as the most recent expression of the legislature, operated as a repeal of the provisions of § 22-9-301 et seq. insofar as they conflict,

and therefore, the contractor on a commercial construction project which was financed pursuant to an industrial development bond issue under this subchapter was not required to pay the prevailing minimum wage. Daniels v. City of Ft. Smith, 268 Ark. 157, 594 S.W.2d 238 (1980).

#### Elections.

This subchapter was based upon former Ark. Const. Amend. 49 (repealed by Ark. Const. Amend. 62, § 11); this amendment did not provide for bonds of any kind to be issued without approval of a majority of the qualified electors voting in an election held for that purpose. Purvis v. City of Little Rock, 282 Ark. 102, 667 S.W.2d 936 (1984).

### Implied Repeal.

Provisions of § 14-16-105 regarding the lease or sale of county property, as in the case of a lease agreement with option to purchase lands donated to county for its industrial development program, are inconsistent with provisions of this subchapter and as such serve to repeal this subchapter in cases coming within the scope of § 14-16-105. Dumas v. Jerry, 257 Ark. 1031, 521 S.W.2d 539 (1975).

Cited: Arkansas Indus. Dev. Comm'n v. FABCO of Ashdown, Inc., 312 Ark. 26, 847 S.W.2d 13 (1993).

### 14-164-201. Title.

This subchapter shall be referred to and may be cited as the "Municipalities and Counties Industrial Development Revenue Bond Law."

History. Acts 1960 (Ex. Sess.), No. 9,

§ 1; A.S.A. 1947, § 13-1601.

A.C.R.C. Notes. Acts 1991, No. 629, § 8, provided: "For purposes of any other law, including, without limitation, § 14-164-201 et seq., the term 'facilities' or a similar term shall include a wastewater project or solid waste disposal project as those terms are defined in this subchap-

ter, so that any law adopted authorizing the issuance of industrial development bonds, industrial development revenue bonds, or similar evidences of indebtedness shall be available for utilization in connection with a privatization project."

Publisher's Notes. Acts 1991, No. 629,

§ 8, is also codified at § 8-5-612.

### **CASE NOTES**

**Cited:** United States v. White, 671 F.2d 1126 (8th Cir. 1982); Hufsmith v. Weaver, 285 Ark. 357, 687 S.W.2d 130 (1985).

### 14-164-202. Purpose.

This subchapter is intended to supplement all constitutional provisions and other legislation designed to secure and develop industry and, when applied in accordance with its provisions, may be used by any municipality or county as an alternative notwithstanding any constitutional provision or any other legislation authorizing a municipality or county or any commission or agency thereof to issue bonds for the purpose of securing and developing industry.

**History.** Acts 1960 (Ex. Sess.), No. 9, § 15; 1961, No. 48, § 5; A.S.A. 1947, § 13-1614.

### 14-164-203. Definitions.

As used in this subchapter, unless the context otherwise requires: (1)(A) "County" means a county of this state, or where a county is divided into two (2) districts, the term "county" shall mean the entire

county or either district of the county;

(B) It is the purpose and intent of this subdivision to define the term "county," as used in this subchapter, to mean an entire county or either district of a county which is divided into two (2) districts and has two (2) separate levying courts, in order that either district of a county so divided may issue revenue bonds and do all other acts in the manner and for the purposes authorized in this subchapter;

(2) "Governing body" means the council, board of directors, or city

commission of any municipality;

(3) "Municipality" means a city of the first or second class or an

incorporated town;

(4) "Equip" means to install or place on or in any building or structure equipment of any and every kind, whether or not affixed, including, without limiting the generality of the foregoing, building service equipment, fixtures, heating equipment, air conditioning equipment, machinery, furniture, furnishings, and personal property of every kind;

(5) "Sell" means to sell for such price, in such manner, and upon such terms as the municipality or county shall determine, including, without limiting the generality of the foregoing, private or public sale, and, if public, pursuant to such advertisement as the municipality or county shall determine, sell for cash or credit payable in lump sum or installments over such period as the municipality or county shall determine and, if on credit, with or without interest and at such rate or rates, as the municipality or county shall determine;

(6) "Lease" means to lease for such rentals, for such periods, and upon such terms and conditions as the municipality or county shall determine, including, without limiting the generality of the foregoing, the granting of renewal or extension options for rentals for such periods and upon such terms and conditions as the municipality or county shall determine and the granting of purchase options for such prices and upon such terms and conditions as the municipality or county shall

determine:

(7) "Facilities" means any real property, personal property, or mixed property of any and every kind that can be used or that will be useful in securing or developing industry, including, without limiting the generality of the foregoing, rights-of-way, roads, streets, pipes, pipelines, reservoirs, utilities, materials, equipment, fixtures, machinery, furniture, furnishings, instrumentalities, and other real, personal, or

mixed property of every kind;

(8) "Construct" means to acquire or build, in whole or in part, in such manner and by such method, including contracting therefor and, if the latter, by negotiation or bidding upon such terms and pursuant to such advertising as the municipality or county shall determine to be in the public interest and necessary, under the circumstances existing at the time, to accomplish the purposes of, and authorities set forth in, this subchapter;

(9) "Industry" means, but is not limited to, manufacturing facilities, warehouses, distribution facilities, repair and maintenance facilities, agricultural facilities, and corporate and management offices for indus-

try.

(10) "Surplus revenues" means revenues remaining after adequate provision has been made for expenses of operation, maintenance, and depreciation and all requirements of ordinances, orders, or indentures securing bonds theretofore or thereafter issued to finance the cost of acquiring, constructing, reconstructing, extending, or improving the lands, buildings, or facilities for developing and securing industry or utilities have been fully met and complied with.

**History.** Acts 1960 (Ex. Sess.), No. 9, §§ 6, 12; 1963, No. 231, § 1; 1967, No. 213, §§ 1, 2; 1971, No. 208, § 1; 1979, No. 773, § 1; 1981, No. 4, § 5; A.S.A. 1947,

§§ 13-1606, 13-1612 — 13-1612.2.

**Publisher's Notes.** As to validation of prior actions, see Acts 1963, No. 231, § 1.

#### CASE NOTES

**Cited:** Dumas v. Jerry, 257 Ark. 1031, 521 S.W.2d 539 (1975).

### 14-164-204. Construction.

This subchapter shall be liberally construed to accomplish its intent and purposes and shall be the sole authority required for the accomplishment of its purpose. To this end, it shall not be necessary to comply with general provisions of other laws dealing with public facilities, their acquisition, construction, leasing, encumbering, or disposition.

**History.** Acts 1960 (Ex. Sess.), No. 9, \$ 15; 1961, No. 48, \$ 5; 1971, No. 208, \$ 2; A.S.A. 1947, § 13-1614, 13-1615.

#### CASE NOTES

ANALYSIS

Conflict of laws. Eminent domain. Implied repeal.

#### Conflict of Laws.

This subchapter authorizing a city to construct an industrial facility for the purpose of securing and developing industry in the area and, in particular this section, enacted in 1971, providing that this subchapter should be liberally construed and that projects under this subchapter did not have to comply with other laws dealing with public facilities, were in conflict with § 22-9-301 et seq., enacted in 1969, requiring that the prevailing minimum wage shall be paid to workers involved in projects constructed for public use; accordingly, this section, as the most recent expression of the legislature, operated as a repeal of the provisions of § 22-9-301 et seq. insofar as they conflict, and therefore, the contractor on a commercial construction project which was financed pursuant to an industrial development bond issue under this subchapter was not required to pay the prevailing minimum wage. Daniels v. City of Ft. Smith, 268 Ark. 157, 594 S.W.2d 238 (1980).

#### Eminent Domain.

This section does not even suggest the conferring or delegating of the power of eminent domain to municipalities for the purpose of acquiring land, buildings, or facilities for use in securing and developing industry. City of Little Rock v. Raines, 241 Ark. 1071, 411 S.W.2d 486 (1967).

Implied Repeal.

This subchapter operated as a repeal of § 14-16-105 in those cases coming within the purview of this subchapter. Dumas v. Jerry, 257 Ark. 1031, 521 S.W.2d 539 (1975).

# 14-164-205. Authority to develop industry.

Any municipality or any county is authorized to own, acquire, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, or contract concerning, or otherwise deal in or dispose of, any land, buildings, or facilities of any and every nature whatever that can be used in securing or developing industry within or near the municipality or county.

**History.** Acts 1960 (Ex. Sess.), No. 9, § 2; A.S.A. 1947, § 13-1602.

#### CASE NOTES

#### ANALYSIS

Eminent domain. Private use.

#### Eminent Domain.

This section authorizing municipalities to acquire land, buildings, or facilities that can be used in securing and developing industries does not confer or delegate to municipalities the power of eminent domain for such purposes. City of Little Rock v. Raines, 241 Ark. 1071, 411 S.W.2d 486 (1967).

#### Private Use.

Where a city financed an industrial facility by issuing industrial development bonds, the facility was not "constructed for public use" within the meaning of § 22-9-301 et seq., which requires that the prevailing minimum wage be paid to workers involved in projects constructed for public use, since although the public would indirectly benefit from the facility, the private corporation retained sole control over all buildings, equipment, and other personal property at the facility, and the general public did not have open access to and use of the facility as they would have to a public library, courthouse, or other public facility. Daniels v. City of Ft. Smith, 268 Ark. 157, 594 S.W.2d 238 (1980).

Cited: Dumas v. Jerry, 257 Ark. 1031, 521 S.W.2d 539 (1975).

# 14-164-206. Authority to issue revenue bonds.

(a) Municipalities and counties are authorized to use any available revenues for the accomplishment of the purposes set forth in § 14-164-205 and are authorized to issue revenue bonds and to use the proceeds thereof for the accomplishment of the purposes set forth in § 14-164-205, either alone or together with other available funds and revenues.

(b)(1) The amount of bonds issued shall be sufficient to pay:

(A) All costs of accomplishing the specified purposes;

(B) All costs of issuing the bonds;

(C) The amount necessary for a reserve, if desirable;

(D) The amount necessary to provide for debt service on the bonds until revenues for the payment of them are available; and

(E) Any other costs of whatever nature necessarily incidental to

the accomplishment of the specified purposes.

(2)(A) In addition, revenue bonds are authorized for the purpose of refunding any bonds issued and outstanding by a municipality or county under the provisions of Arkansas Constitution, Amendment 49 [repealed], it being declared that such refunding will be in the best interest of the municipality or county involved and will be in furtherance of the purpose of securing and developing industry in that the tax levied for the Arkansas Constitution, Amendment 49 [repealed] bonds being refunded will, by virtue of the refunding, be released and thereby made available for a subsequent bond issue under Arkansas Constitution, Amendment 49 [repealed].

(B) The bonds issued under this subchapter for the purpose of refunding Arkansas Constitution, Amendment 49 [repealed] bonds may be issued solely for that purpose or may be issued for that purpose and for the accomplishment of any other purposes set forth

in § 14-164-205.

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**History.** Acts 1960 (Ex. Sess.), No. 9, \$ 3; 1961, No. 48, \$ 1; 1965, No. 383, \$ 1; A.S.A. 1947, \$ 13-1603.

A.C.R.C. Notes. It is questionable whether Ark. Const., Art. 49 is repealed in whole or whether only those provisions

that conflict with Ark. Const., Art. 62 are repealed by Ark. Const., Art. 62.

Cross References. Industrial development compacts between counties and/or municipalities, § 14-165-201 et seq.

#### **CASE NOTES**

Constitutionality.

The issuance of revenue bonds by a city to obtain money with which to purchase land and construct manufacturing facilities to alleviate unemployment in that area, being special bonds as distinguished from general obligation bonds, does not violate any constitutional provisions. Wayland v. Snapp, 232 Ark. 57, 334 S.W.2d 633 (1960).

# 14-164-207. Applicability of §§ 14-164-208 — 14-164-216, and 14-164-218.

The provisions of this section and §§ 14-164-208 — 14-164-216 and 14-164-218 shall not restrict the issuance of any bonds with regard to which a resolution, ordinance, order, or like action authorizing or committing to the issuance of bonds shall have been adopted or taken by a municipality or county prior to March 16, 1981.

**History.** Acts 1981, No. 503, § 3; A.S.A. 1947, § 13-1605.1.

# 14-164-208. Adoption of bond ordinance or order.

(a)(1) Revenue bonds authorized in this subchapter may be issued by a municipality upon the adoption of an ordinance for that purpose by the governing body of the municipality.

(2) Revenue bonds authorized in this subchapter may be issued by a county upon the entry of an order of the county court of the county.

(b) The ordinance or order shall state the purpose for which the revenue bonds are to be issued and the total amount of the issue.

(c)(1) No ordinance or order shall be adopted or entered until after a public hearing is held before the governing body of the municipality or

the county court of the county.

(2) At least ten (10) days prior to the date of the hearing, notice of it shall be filed with the Director of the Arkansas Economic Development Commission and the State Securities Commissioner and shall be published one (1) time in a newspaper of general circulation in the municipality or county.

(d) After the hearing, which may be adjourned from time to time, the ordinance or order, as introduced or as modified or amended, may be

adopted or entered.

(e)(1) The notice provided for in this section shall be published and filed by the clerk or recorder of the municipality or by the county clerk of the county.

(2) It shall not be necessary that the action be taken by the governing body or county court to direct publication and filing of the notice. The

clerk or recorder, or county clerk, as the case may be, shall publish and file notice when requested to do so by the mayor or any member of the governing body in the case of the municipality or by the county judge in the case of a county.

**History.** Acts 1960 (Ex. Sess.), No. 9, § 4; 1968 (1st Ex. Sess.), No. 52, § 1; 1975 (Extended Sess., 1976), No. 1239, § 1; 1981, No. 503, § 1; A.S.A. 1947, § 13-1604; Acts 1997, No. 540, § 16.

Amendments. The 1997 amendment substituted "Arkansas Economic Development Commission" for "Arkansas Industrial Development Commission" in (c)(2).

### 14-164-209. Bonds — Issuance — Authorizing resolution.

(a) The issuance of revenue bonds shall be by an ordinance of the municipality or an order of the county court, as the case may be.

(b) In the ordinance of the municipality or the order of the county court authorizing the issuance of revenue bonds, the municipality or

the county may:

(1) Provide for the initial issuance of one (1) or more bonds aggregating the principal amount of the entire issue and may, in the ordinance or order, make such provisions for installment payments of the principal amount of the bonds as it may consider desirable; and

(2) Provide for the bonds to be payable to the bearer with interest coupons, or to be registrable as to principal only with interest coupons, or to be registrable as to principal and interest, and where interest accruing thereon is not represented by interest coupons, for the endorsement of payment of interest on the bonds.

**History.** Acts 1960 (Ex. Sess.), No. 9, 121, § 1; 1970 (Ex. Sess.), No. 36, § 1; § 5; 1961, No. 48, § 2; 1963, No. 231, § 2; 1981, No. 4, § 2; A.S.A. 1947, § 13-1605. 1968 (1st Ex. Sess.), No. 16, § 1; 1969, No.

# 14-164-210. Bonds — Terms and conditions.

- (a) The bonds may be in bearer or registered form, with or without coupons, and may be subject to exchange or modification in that regard, and, as the ordinance may provide, may:
  - (1) Be issued in one (1) or more series;

(2) Bear such date or dates;

(3) Mature at such time or times, not exceeding thirty (30) years from their respective dates;

(4) Bear interest at such rate or rates;

(5) Be in such form;

(6) Be executed in such manner;

(7) Be payable in such medium of payment, at such place or places;

(8) Be subject to such terms of redemption; and

(9) Contain such terms, covenants, and conditions, including, without limitation, those pertaining to:

(A) The custody and application of proceeds of the bonds;

(B) The collection and disposition of revenues;

(C) The maintenance of various funds and reserves;

(D) The nature and extent of the security;

(E) The rights, duties, and obligations of the municipality or county and the trustee for the holders or registered owners of the bonds; and

(F) The rights of the holders or registered owners of the bonds.

(b) The bonds shall have all the qualities of negotiable instruments under the negotiable instruments laws of this state.

**History.** Acts 1960 (Ex. Sess.), No. 9, 1975, No. 221, § 1; 5; 1961, No. 48, § 2; 1963, No. 231, § 2; 1976), No. 1239, § 1968 (1st Ex. Sess.), No. 16, § 1; 1969, No. 1981, No. 503, § 121, § 1; 1970 (Ex. Sess.), No. 36, § 1; 1605.

1975, No. 221, § 1; 1975 (Extended Sess., 1976), No. 1239, § 2; 1981, No. 4, §§ 2-4; 1981, No. 503, § 2; A.S.A. 1947, § 13-1605

# 14-164-211. Bonds — Trust indenture, lease, etc.

- (a) The ordinance or order may provide for the execution by the municipality or county of an indenture which defines the rights of the bondholders and provides for the appointment of a trustee for the bondholders.
- (b) The indenture may control the priority between successive issues and may contain any other items, covenants, and conditions that are deemed desirable, including, without limitation, those pertaining to:

(1) The custody and application of the proceeds of the bonds;

(2) The collection and disposition of revenues;

(3) The maintenance of various funds and reserves;

(4) The nature and extent of the security;

(5) The rights, duties, and obligations of the municipality or county and the trustee for the holders or registered owners of the bonds; and

(6) The rights of the holders or registered owners of the bonds.

(c) It shall not be necessary for the municipality to publish any indenture, lease, or any other agreement if the ordinance authorizing an indenture, the ordinance authorizing a lease, or the ordinance authorizing any other agreement is published as required by the law governing the publication of ordinances of a municipality and the ordinance advises that a copy of the indenture, lease, or other agreement, as the case may be, is on file in the office of the clerk or recorder of the municipality for inspection by an interested person, and the copy of the indenture, lease, or other agreement, as the case may be, is filed with the clerk or recorder of the municipality.

**History.** Acts 1960 (Ex. Sess.), No. 9, § 5; 1961, No. 48, § 2; 1963, No. 231, § 2; 1968 (1st Ex. Sess.), No. 16, § 1; 1969, No. 121, § 1; 1970 (Ex. Sess.), No. 36, § 1;

1975, No. 221, § 1; 1975 (Extended Sess., 1976), No. 1239, § 2; 1981, No. 4, §§ 2-4; 1981, No. 503, § 2; A.S.A. 1947, § 13-1605.

### 14-164-212. Bonds and coupons — Execution.

(a)(1)(A) The bonds shall be executed by the mayor and the city clerk or recorder of the municipality, or by the county judge and the county clerk of the county, as the case may be.

(B) One (1) signature may be facsimile, but one (1) signature must

be manual.

(2) The coupons attached to the bonds may be executed by the

facsimile signature of the mayor or county judge.

(b) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of the bonds or coupons, their signatures shall nevertheless be valid and sufficient for all purposes.

**History.** Acts 1960 (Ex. Sess.), No. 9, § 5; 1961, No. 48, § 2; 1963, No. 231, § 2; 1968 (1st Ex. Sess.), No. 16, § 1; 1969, No. 121, § 1; 1970 (Ex. Sess.), No. 36, § 1;

1975, No. 221, § 1; 1975 (Extended Sess., 1976), No. 1239, § 2; 1981, No. 4, §§ 2-4; 1981, No. 503, § 2; A.S.A. 1947, § 13-1605.

### 14-164-213. Bonds — Sale.

The bonds may be sold for such price, including, without limitation, sale at a discount, and in such manner as the municipality or county may determine by ordinance or order.

**History.** Acts 1960 (Ex. Sess.), No. 9, § 5; 1961, No. 48, § 2; 1963, No. 231, § 2; 1968 (1st Ex. Sess.), No. 16, § 1; 1969, No. 121, § 1; 1970 (Ex. Sess.), No. 36, § 1;

1975, No. 221, § 1; 1975 (Extended Sess., 1976), No. 1239, § 2; 1981, No. 4, §§ 2-4; 1981, No. 503, § 2; A.S.A. 1947, § 13-1605.

# 14-164-214. Bonds — Conversion.

The municipality or the county may make provision in the ordinance or order for the manner and circumstances in which and under which bonds issued under this section may, in the future at the request of the holders or registered owners thereof, be converted into bonds of smaller denomination. The bonds of smaller denomination may in turn be either coupon bonds payable to bearer or bonds registrable as to principal only, or bonds registrable as to both principal and interest.

**History.** Acts 1960 (Ex. Sess.), No. 9, § 5; 1961, No. 48, § 2; 1963, No. 231, § 2; 1968 (1st Ex. Sess.), No. 16, § 1; 1969, No. 121, § 1; 1970 (Ex. Sess.), No. 36, § 1;

1975, No. 221, § 1; 1975 (Extended Sess., 1976), No. 1239, § 2; 1981, No. 4, §§ 2-4; 1981, No. 503, § 2; A.S.A. 1947, § 13-1605.

# 14-164-215. Bonds — Successive issues.

There may be successive bond issues for the purpose of financing the same industrial projects, including land, buildings, or facilities, involving one (1) or more industries, and there may be successive bond issues for financing the cost of reconstructing, replacing, constructing additions to, extending, improving, and equipping industrial projects, including land, buildings, or facilities, already in existence, whether or

not originally financed by bonds issued under this subchapter, with each successive issue to be authorized as provided by this subchapter.

**History.** Acts 1960 (Ex. Sess.), No. 9, § 5; 1961, No. 48, § 2; 1963, No. 231, § 2; 1968 (1st Ex. Sess.), No. 16, § 1; 1969, No. 121, § 1; 1970 (Ex. Sess.), No. 36, § 1;

1975, No. 221, § 1; 1975 (Extended Sess., 1976), No. 1239, § 2; 1981, No. 4, §§ 2-4; 1981, No. 503, § 2; A.S.A. 1947, § 13-1605.

# 14-164-216. Bonds — Priority among issues.

Priority between and among issues and successive issues as to security of the pledge of revenues and mortgage liens on the land, buildings, and facilities involved may be controlled by the ordinance or order authorizing the issuance of bonds under this subchapter.

**History.** Acts 1960 (Ex. Sess.), No. 9, § 5; 1961, No. 48, § 2; 1968 (1st Ex. Sess.), No. 16, § 1; 1969, No. 121, § 1;

1970 (Ex. Sess.), No. 36, § 1; 1981, No. 4, § 2; A.S.A. 1947, § 13-1605.

# 14-164-217. Bonds - Payment.

(a)(1) Revenue bonds issued under this subchapter shall not be general obligations of the municipality or county, but shall be special obligations, and in no event shall the revenue bonds constitute an indebtedness of the municipality or county within the meaning of any constitutional or statutory limitation.

(2) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter and that it does not constitute an indebtedness of the municipality or county within any

constitutional or statutory limitation.

(b)(1) The principal of, and interest on, the revenue bonds and paying agent's fees shall be payable in the first instance from gross revenues derived from the lands, buildings, or facilities acquired, constructed, reconstructed, extended, or improved, in whole or in part,

with the proceeds of the bonds.

(2) In addition, the municipality or county is authorized to pledge to, and use for, the payment of the principal of, and interest on, the bonds and paying agent's fees, surplus revenues derived from other lands, buildings or facilities used and useful for securing and developing industry, or surplus revenues derived from water, sewer, gas, and electric utilities owned by the municipality or county.

**History.** Acts 1960 (Ex. Sess.), No. 9, § 6; A.S.A. 1947, § 13-1606.

# 14-164-218. Bonds — Interim financing.

(a) If the issuance of bonds is authorized in accordance with the provisions of this subchapter, a municipality or county is authorized to obtain interim financing pending the delivery of all or any part of the bonds from such sources and upon such terms as the municipality or the county shall determine.

- (b) As evidence of any indebtedness so incurred, the municipality or the county may execute and deliver its promissory note or notes and pledge to the payment thereof any revenues authorized by this subchapter to be pledged to revenue bonds and may secure the notes in the same manner as revenue bonds issued under this subchapter may be secured.
  - (c) As the ordinance or order may provide, the notes may:

(1) Bear such date or dates;

(2) Mature at such time or times, not exceeding thirty-six (36) months from their respective dates;

(3) Bear interest at such rate or rates;

(4) Be in such form;

(5) Be executed in such manner;

(6) Be payable at such place or places;

(7) Contain such provisions for prepayment prior to maturity; and

(8) Contain such other terms, or covenants and conditions, consistent with the provisions of this subchapter, pertaining to revenue bonds and pertaining to the security, rights, duties, and obligations of the municipality or county and the trustee for the holders or registered owners of the bonds and the rights of the holders or registered owners of the bonds.

(d) These notes shall not be general obligations of the municipality or county but shall be special obligations, and in no event shall these notes constitute an indebtedness of the municipality or county within the

meaning of any constitutional or statutory limitation.

(e) The municipality or county may use, as distinguished from pledge, any available revenues to pay or to apply to the payment of the principal of, and interest on, these notes and may use the proceeds of revenue bonds, either alone or with other available revenues, to pay the principal and interest on the notes.

**History.** Acts 1960 (Ex. Sess.), No. 9, 36, § 1; 1975 (Extended Sess., 1976), No. § 5; 1968 (1st Ex. Sess.), No. 16, § 1; 1239, § 2; 1981, No. 4, §§ 2-4; A.S.A. 1969, No. 121, § 1; 1970 (Ex. Sess.), No. 1947, § 13-1605.

# 14-164-219. Refunding bonds.

(a)(1) Revenue bonds may be issued under this subchapter for the purpose of refunding any obligations issued under this subchapter.

(2) Refunding bonds may be combined with bonds issued under the

provisions of § 14-164-206 into a single issue.

(b)(1) When bonds are issued under this section for refunding purposes, the bonds may either be sold or delivered in exchange for the outstanding obligations.

(2) If sold, the proceeds may be either applied to the payment of the obligations refunded or deposited in escrow for the retirement of them.

(c)(1) The ordinance or order under which the refunding bonds are issued may provide that any of the bonds shall have the same priority

of lien on the revenues pledged for their payment as was enjoyed by the

obligations refunded by them.

(2) Refunding bonds shall be issued and secured in the manner provided for other bonds issued under this subchapter and shall have all the attributes of these bonds.

**History.** Acts 1960 (Ex. Sess.), No. 9, § 7; 1965, No. 383, § 2; 1975 (Extended Sess., 1976), No. 1239, § 3; A.S.A. 1947, § 13-1607; reen. Acts 1987, No. 1020, § 1.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1020, § 1. Acts

1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

# 14-164-220. Statutory mortgage lien.

(a)(1) The ordinance, order, or indenture referred to in §§ 14-164-209 and 14-164-211 may, but need not, impose a foreclosable mortgage lien upon the land, buildings, or facilities acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of bonds issued under this subchapter.

(2) The nature and extent of the mortgage lien may be controlled by the ordinance, order, or indenture, including, without limitation, provisions pertaining to the release of all, or part of, the land, buildings, or facilities from the mortgage lien and the priority of the mortgage lien in the event of successive bond issues as authorized by § 14-164-215.

(b)(1) The ordinance, order, or indenture authorizing or securing the bonds may authorize any holder or registered owner of bonds issued under the provisions of this subchapter, or a trustee on behalf of all holders and registered owners, either at law or in equity, to enforce the mortgage lien and, by proper suit, compel the performance of the duties of the officials of the issuing municipality or county set forth in this subchapter and set forth in the ordinance, order, or indenture authorizing or securing the bonds.

(2) References in this subchapter to mortgage liens shall include and mean security interest in any personal property embodied in the facilities acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of bonds issued under

this subchapter.

**History.** Acts 1960 (Ex. Sess.), No. 9, \$ 8; 1961, No. 48, \$ 3; 1975, No. 221, \$ 2; A.S.A. 1947, \$ 13-1608.

Cross References. Condemnation of lands for which bonds issued, § 18-15-308

### **CASE NOTES**

#### Foreclosure.

If the municipality has the power to mortgage its property, it is subject to foreclosure on the breach of the condition. Wayland v. Snapp, 232 Ark. 57, 334 S.W.2d 633 (1960).

### 14-164-221. Default in payment of bonds.

(a) In the event of a default in the payment of the principal of, or interest on, any revenue bonds issued under this subchapter, any court having jurisdiction may appoint a receiver to take charge of the land, buildings, or facilities acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of revenue bonds issued under this subchapter, upon which land, buildings, or facilities, or any part thereof, there is a mortgage lien securing the revenue bonds with reference to which there is such a default in the payment of principal or interest.

(b) The receiver shall have the power to operate and maintain the land, buildings, or facilities and to charge and collect rates or rents sufficient to provide for the payment of the principal of, and interest on, the bonds, after providing for the payment of any cost of receivership and operating expenses of the land, buildings, or facilities, and to apply the income and revenues derived from the land, buildings, or facilities in conformity with this subchapter and the ordinance, order, or inden-

ture authorizing or securing the bonds.

(c) When the default has been cured, the receivership shall be ended

and the properties returned to the municipality or county.

(d) The relief afforded by this section shall be construed to be in addition and supplemental to the remedies that may be afforded the trustee for the bondholders and the bondholders in the ordinance, order, or indenture authorizing or securing the bonds and shall be so granted and administered as to accord full recognition to priority rights of bondholders as to the pledge of revenues from, and mortgage lien on, the land, buildings, or facilities as specified in, and fixed by, the ordinances, orders, or indentures authorizing or securing successive bond issues.

**History.** Acts 1960 (Ex. Sess.), No. 9, § 9; 1961, No. 48, § 4; A.S.A. 1947, § 13-1609.

# 14-164-222. Bonds — Tax exemption.

(a) Bonds issued under the provisions of this subchapter shall be exempt from all state, county, and municipal taxes.

(b) This exemption includes income and inheritance taxes.

**History.** Acts 1960 (Ex. Sess.), No. 9, \$ 10; A.S.A. 1947, \$ 13-1610.

A.C.R.C. Notes. Language excluding property taxes from the exemption provided by this section was deleted pursuant to Ark. Const. Amend. 57, § 1 and § 26-3-302. The Arkansas Const. Amend. 57, § 1 provides that the General Assembly may classify intangible personal property for assessment at lower percentages of value than other property and may ex-

empt one or more classes of intangible personal property from taxation, or may provide for the taxation of intangible personal property on a basis other than ad valorem. Section 26-3-302 exempts all intangible personal property in this state from all ad valorem tax levies of counties, cities, and school districts in the state as of January 1, 1976.

Cross References. Exemptions from ad valorem taxation, § 14-164-701 et seq.

#### CASE NOTES

#### Elements.

For property to be exempted from taxation two elements must be present: (a) the subject property must be "public property," that is, it must be owned by the

municipality, and (b) it must be used exclusively for public purposes. Wayland v. Snapp, 232 Ark. 57, 334 S.W.2d 633 (1960).

### 14-164-223. Public investment.

(a) Any municipality or any board, commission, or other authority established by ordinance of any municipality, or the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any municipality or any county, or the board of trustees of any retirement system created by the General Assembly may, in its discretion, invest any of its funds not immediately needed for its purposes in the revenue bonds issued under the provisions of this subchapter.

(b) Revenue bonds issued under this subchapter shall be eligible to secure the deposit of public funds.

**History.** Acts 1960 (Ex. Sess.), No. 9, § 11; A.S.A. 1947, § 13-1611.

## 14-164-224. No utility acquisition by municipality.

Nothing in this subchapter shall be construed to authorize any municipality to issue or sell revenue bonds, or use the proceeds thereof, to purchase, condemn, or otherwise acquire a utility plant or distribution system owned or operated by a regulated public utility.

**History.** Acts 1960 (Ex. Sess.), No. 9, § 13; A.S.A. 1947, § 13-1613.

§ 13; A.S.A. 1947, § 13-1613.	
Subchapter 3 — Local	GOVERNMENT BOND ACT
SECTION.	SECTION.
14-164-301. Title.	14-164-312. Bonds generally — Trust in-
14-164-302. Legislative intent.	denture.
14-164-303. Definitions.	14-164-313. Bonds generally — Contents.
14-164-304. Construction.	14-164-314. Bonds generally — Execu-
14-164-305. Subchapter supplemental.	tion.
14-164-306. Venue.	14-164-315. Bonds generally — Sale.
14-164-307. Financing of facilities for in-	14-164-316. Bonds generally - Pledge of
dustry.	taxes generally.
14-164-308. Bonds generally — Authoriz-	14-164-317. Bonds generally — Pledge
ing ordinance.  14-164-309. Bonds generally — Election	and collection of ad valo-
to authorize issuance.	rem taxes.
14-164-310. Bonds generally — Terms	14-164-318. Bonds generally — Succes-
and conditions.	sive issues.
14-164-311. Bonds generally — Interest	14-164-319. Bonds generally — Mortgage
rates.	lien.

SECTION. SECTION. 14-164-320. Bonds generally — Liability. 14-164-331. Capital improvement bonds 14-164-321. Bonds generally — Tax ex- Local sales and use tax emption. Alteration of municipal 14-164-322. Bonds generally - Multipurboundaries. pose bonds. 14-164-332. Capital improvement bonds Local sales and use taxPledge. 14-164-323. Bonds generally — Interim borrowing. 14-164-324. Refunding bonds. 14-164-333. Capital improvement bonds 14-164-325. Taxes not state revenues. Local sales and use tax - Administration, collec-14-164-326. Capital improvement bonds - Hotel and restaurant tion, etc. 14-164-334. Capital improvement bonds tax. 14-164-327. Capital improvement bonds - Local sales and use tax Local sales and use tax — Single transactions. — Levy. 14-164-335. Capital improvement bonds 14-164-328. Capital improvement bonds Local sales and use tax Local sales and use tax - Reports. - Election to authorize. 14-164-336. Local Sales and Use Tax 14-164-329. Capital improvement bonds Trust Fund. - Local sales and use tax 14-164-337. Pledge of preexisting sales - Effective dates for impoand use tax. sition and termination of 14-164-338. Alternative to issuance of bonds. tax levv. 14-164-330. Capital improvement bonds 14-164-339. Simultaneous pledge of local Local sales and use tax sales and use tax. - Notice to Director of the 14-164-340. Alternative to issuance of Department of Finance bonds — Criminal justice and Administration. projects.

Publisher's Notes. Acts 1985, No. 976 confirmed and continued the authority of municipalities to levy the hotel and restaurant tax and to pledge the proceeds of that tax to tourism bonds by ordinance subject to referendum but without a prior vote of the people. It declared the proceeds of any hotel and restaurant tax pledged to tourism bonds issued under Acts 1971. No. 380, or bonds issued under the Local Government Capital Improvement Revenue Bond Act of 1985, § 14-164-401 et seq. for tourism projects, to be project revenues of the project financed. It further provided that the hotel and restaurant tax is not a "tax" as taxes are normally understood and intended for government support, but is a special levy paid and collected by those persons and entities peculiarly associated with and benefited by tourism. However, since the Local Government Bond Act of 1985, § 14-164-301 et seg, makes specific reference to hotel and restaurant taxes, and the Local Government Capital Improvement Revenue Bond Act of 1985, § 14-164-401 et seq.

does not, it is uncertain which of these Acts was intended to be referred to by Acts 1985. No. 976.

A.C.R.C. Notes. References to "this subchapter" in §§ 14-164-301 — 14-164-337 may not apply to §§ 14-164-338 and 14-364-339 which were enacted subsequently.

Cross References. Community redevelopment financing, § 14-168-201 et seq.

County and municipal pollution control facilities, § 14-267-101 et seq.

Energy conservation and renewable energy resource financing, § 14-167-201 et sea.

Industrial development funds, § 14-164-201 et seq.

Local government reserve funds, § 14-73-101 et seq.

Municipal street and parking revenue bonds, § 14-302-101 et seq.

Registration of public obligations, § 19-9-401 et seq.

Tourism revenue bonds, § 14-170-201 et seq.

Effective Dates. Acts 1985, No. 871,

§ 25: Apr. 15, 1985. Emergency clause provided: "It is hereby found and declared that by virtue of adoption of Amendment No. 62 that there are now no provisions for municipalities and counties to conduct elections or otherwise implement the provisions of said amendment and that municipalities and counties have an immediate and pressing need for borrowing funds through the issuance of bonds authorized by Amendment 62 attributable in substantial part to prevailing interest rates having been greatly in excess of limitations on interest rates heretofore imposed by the Constitution of Arkansas. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the protection of the public peace, health and safety, shall take effect, and be in full force, immediately on its passage and approval."

Acts 1987, No. 368, § 3: Mar. 23, 1987. Emergency clause provided: "It has been found and it is hereby declared that certain municipalities in this State cannot finance facilities for nonprofit organizations engaged primarily in public health. safety and disaster relief at affordable costs except by the use of bonds as authorized hereby and that there is an immediate need for facilities for such organizawhich serve important public functions. Therefore, an emergency is declared and this Act, being necessary for the public peace, health and safety, shall be in force upon its passage and approval."

Acts 1988 (4th Ex. Sess.), No. 25, § 1: July 25, 1988. Emergency clause provided: "It is hereby found and determined by the General Assembly that some local governments have an immediate and pressing need to finance capital improvements without incurring unnecessary bond issue expenses; that until this Act becomes effective, the local governments must either finance those capital improvements through bond issues or delay commencing the capital improvements which would in either case result in greater cost than using the method provided by this Act; and that this Act should be given effect immediately in order to minimize the amount of taxes necessary to finance capital improvements. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety

shall be in full force and effect from and after its passage and approval."

Acts 1988 (4th Ex. Sess.), No. 26, § 3: Aug. 3, 1988. Emergency clause provided: "It has been found and it is hereby declared that certain municipalities in this State cannot finance cable television facilities at affordable costs except by the use of bonds as authorized hereby. Therefore, an emergency is declared and this Act, being necessary for the public peace, health and safety, shall be in force upon

its passage and approval."

Acts 1989, No. 458, § 4: Mar. 10, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that present law allows a one percent (1%) sales tax to be levied by the people to finance capital improvements and that the tax can be levied for no longer than twelve (12) months; that in some instances this method of financing is critical to the construction of local jails: that the twelve (12) month limit on the sales tax is inadequate to finance the construction of some local jails; that this Act would extend the time frame from twelve (12) months to twenty-four (24) months: and that this Act should be given immediate effect in order to authorize the voters to vote as soon as possible upon the issue of levying a one percent (1%) sales and use tax to be levied for twenty-four (24) months. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 497, § 7: Mar. 13, 1989. Emergency clause provided: "It is hereby found and declared by the General Assembly that municipalities and counties of the State of Arkansas have outstanding bonds pavable from local sales and use taxes that must cease to be collected when the bonds are retired; and that the provisions of this Act are immediately needed in order to provide a procedure for terminating the tax and thereby reducing the local tax burden on the taxpayers of such municipalities and counties. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and ap-

proval."

Acts 1991, No. 645, § 6: Mar. 19, 1991. Emergency clause provided: "It has been found and it is hereby declared that certain municipalities in this state cannot finance educational facilities, economic development facilities, and museum related audiovisual facilities at affordable costs except by the use of bonds as authorized hereby. It has been further found and determined that the provisions of Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated authorizing the levy of a local sales and use tax by municipalities and counties are in need of clarification as regards the authority of the governing bodies of such counties and municipalities to abolish such taxes in certain situations. Therefore, an emergency is declared and this act, being necessary for the public peace, health and safety, shall be in full force from and after its passage and approval."

Acts 1991, No. 646, § 7: Mar. 19, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that municipalities and counties in this state are faced with financial crises with reference to having sufficient tax resources to fund both capital projects and operations. That such financial crises constitute such an emergency that the immediate passage of this act is necessary in order to provide financial flexibility and relief to such municipalities and counties. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its

passage and approval."

Acts 1991, No. 765, § 22: Apr. 8, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that cities and counties are faced with financial crises with reference to having sufficient tax resources to fund capital improvements of a public nature and to provide services to their inhabitants; that under current law the counties are restricted to a one percent (1%) levy and the cities are restricted to a one-half of one percent (0.05%) or one percent (1%)levy; that the ability to levy a sales and use tax computed on one-fourth of one percent, one-half of one percent, threefourths of one percent, or one percent (1%) would be a feasible alternative for some cities and counties in financial crisis; and

that such financial crises constitute such an emergency that the immediate passage of this act is necessary in order to provide financial relief to the cities and counties. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from and after its passage and approval."

Acts 1992 (1st Ex. Sess.), No. 36, § 5: Mar. 10, 1992. Emergency clause provided: "It is hereby found and declared by the General Assembly that municipalities and counties in this state have an immediate need to finance capital improvements of a public nature and that existing laws must be clarified in order to insure the use of those laws to accomplish the same. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1014, § 5: Apr. 12, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that Arkansas Code 14-164-338 does not presently indicate where the revenues derived from the tax levied under that section may be used to retire existing bonded indebtedness for capital improvements; that such use of those tax revenues should be allowed; that this act allows such use; and that this act should go into effect as soon as possible in order to give the cities and counties the maximum flexibility for retiring existing bond issues for capital improvements. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1994 (2nd Ex. Sess.), No. 64, § 7: Aug. 26, 1994. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas meeting in the Second Extraordinary Session of 1994 that some local governments have an immediate and pressing need to finance capital improvements for criminal justice projects without incurring unnecessary bond issue expenses; that until this act becomes effective, the local governments

must either finance those capital improvements through bond issues or delay commencing the capital improvements which would in either case result in greater cost than using the method provided by this act and a greater threat to the general public safety from criminals; and that this act should be given effect immediately in order to minimize the amount of taxes necessary to finance capital improvements for criminal justice purposes and to insure the public safety. Therefore, in order to authorize the people of counties and cities to vote as soon as possible on the issue of levying sales taxes for capital improvements for criminal projects, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 101, § 5: approved Jan. 27, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that a number of municipalities and counties in this State have levied a local sales and use tax to be collected only for a specified time or only so long as necessary to retire certain bonded indebtedness; that some of such municipalities and counties have an immediate need to finance capital improvements of a public nature; that under present law such municipalities and counties must, in order to do so, levy an addi-

tional tax or wait until the existing tax expires; and that such municipalities and counties should be permitted to finance the needed capital improvements without increasing tax rates by levying a new local sales and use tax at the same rate as the present tax and delay the effective date of the new tax until the expiration of the present. Therefore an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 565, § 25: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that there are in excess of 300 different local sales and use taxes in effect; that many of these taxes are for specified duration; that notification of affected taxpayers of the beginning and ending of these taxes is time consuming and costly; that requiring local sales and use taxes to begin and end on a calendar quarter basis will ease the administrative burden of taxpayers and the cost to the State of Arkansas; and that an effective date of July 1, 1995 is necessary to achieve the purpose of this legislation. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1995."

Acts 1997, No. 1176, § 20: Jan. 1, 1998.

#### RESEARCH REFERENCES

UALR L.J. Legislative Survey, Bonds, 8 UALR L.J. 551.

### 14-164-301. Title.

This subchapter shall be referred to and may be cited as the "Local Government Bond Act of 1985."

**History.** Acts 1985, No. 871, § 1; A.S.A. 1947, § 13-1239.

**A.C.R.C.** Notes. It is questionable whether Ark. Const., Art. 49 is repealed in

whole or whether only those provisions that conflict with Ark. Const., Art. 62 are repealed by Ark. Const., Art. 62.

## 14-164-302. Legislative intent.

The people of the State of Arkansas by the adoption of Arkansas Constitution, Amendment 62 have expressed their intention to provide county and municipal governments expanded powers and authority with respect to the creation of bonded indebtedness for capital improvements of a public nature and the financing of facilities for the securing and developing of industry, and have empowered the General Assembly to define and prescribe certain matters with respect to the exercise of this power and authority. To that end this subchapter is adopted to enable the accomplishment and realization of the public purposes intended by Arkansas Constitution, Amendment 62 and is not intended to otherwise limit in any manner the exercise of the powers of counties and municipalities.

**History.** Acts 1985, No. 871, § 2; A.S.A. 1947, § 13-1240.

#### 14-164-303. Definitions.

(a) As used in this subchapter, unless the context otherwise requires:

(1) "Bonds" means bonds issued pursuant to this subchapter or under Arkansas Constitution, Amendment 62 if issued prior to the enactment hereof;

(2) "Capital improvements of a public nature" or "capital improvements" for the purposes of Arkansas Constitution, Amendment 62, and this subchapter means, whether obtained by purchase, lease, construction, reconstruction, restoration, improvement, alteration, repair, or other means:

(A) Any physical public betterment or improvement or any preliminary plans, studies, or surveys relative thereto;

(B) Land or rights in land, including, without limitation, leases,

air rights, easements, rights-of-way, or licenses; and

(C) Any furnishings, machinery, vehicles, apparatus, or equipment for any public betterment or improvement, which shall include, without limiting the generality of the foregoing definition, the following: city or town halls, courthouses, and administrative, executive, or other public offices; court facilities; jails; police and sheriff stations, apparatus, and facilities; firefighting facilities and apparatus; public health facilities and apparatus; hospitals, nursing homes, and similar extended-care facilities; facilities for nonprofit organizations engaged primarily in public health, health systems support, safety, disaster relief, and related activities; residential housing for low and moderate income, elderly, or individuals with disabilities and families; parking facilities and garages; educational facilities; economic development facilities; education and training facilities for public employees; auditoriums; stadiums; convention, meeting, or entertainment facilities; ambulance and other emergency medical service facilities; civil defense facilities; air and water pollution control facilities; drainage and flood control facilities; storm sewers; arts and

crafts centers; museums and related audiovisual facilities; libraries; public parks, playgrounds, or other public open space; marinas; swimming pools, tennis courts, golf courses, camping facilities, gymnasiums, and other recreational facilities; tourist information and assistance centers; historical, cultural, natural, or folklore sites; fair and exhibition facilities; streets and street lighting, alleys, sidewalks, roads, bridges, and viaducts; airports, passenger or freight terminals, hangars, and related facilities; barge terminals, ports, harbors, ferries, wharves, docks, and similar marine services; slack water harbors, water resource facilities, waterfront development facilities. and navigational facilities; public transportation facilities; public water systems and related transmission and distribution facilities, storage facilities, wells, impounding reservoirs, treatment plants, lakes, dams, watercourses, and water rights; sewage collection systems and treatment plants; maintenance and storage buildings and facilities; incinerators; garbage and solid waste collection disposal, compacting, and recycling facilities of every kind; facilities for the generation, transmission, and distribution of television communications; gas and electric generation, transmission, and distribution systems, including without limiting the generality of the foregoing, hydroelectric generating facilities, dams, powerhouses, and related facilities; and social and rehabilitative service facilities;

(3) "Chief executive" means the mayor of a municipality or the

county judge of a county;

(4) "Clerk" means the clerk or recorder of a municipality or county

clerk of a county;

(5) "Director" means the Director of the Department of Finance and Administration or any successor to the duties thereof and any authorized agent thereof;

(6) "County" means any county in the State of Arkansas;

(7) "Federal reserve rate" means the federal reserve discount rate on ninety-day commercial paper in effect at the federal reserve bank for

the federal reserve district in which Arkansas is located;

(8) "Industrial development bonds" means bonds specified in Arkansas Constitution, Amendment 62, §§ 2 and 3, issued for the public purpose of financing facilities for the securing and developing of industry;

(9) "Industrial facilities" means:

- (A) Land, interests in land, buildings, facilities, equipment, or related improvements necessary or useful for the securing, developing, preserving, or maintaining of economic activity within or near the municipality or county, including, but not limited to, manufacturing facilities;
  - (B) Warehouse and storage facilities;
  - (C) Distribution facilities;
  - (D) Repair and maintenance facilities;

(E) Communications facilities;

(F) Facilities for computer and data processing equipment and related services;

(G) Agricultural storage, processing, packaging, shipping, and other agricultural facilities;

(H) Transportation facilities;

(I) Tourism facilities;

(J) Corporate and management offices for industry; and

(K) Industrial parks;

(10) "Issuer" means a municipality or a county;

(11) "Legislative body" means the quorum court of a county or the council, board of directors, board of commissioners, or similar elected

governing body of a city or town;

- (12) Local sales and use tax, as used in §§ 14-164-327 14-164-339, means a tax on the receipts from sales at retail within such municipality or county of all items which are subject to taxation under the Arkansas Gross Receipts Tax Act of 1941, as amended, § 26-52-101 et seq., and a tax on the receipts for storing, using, or consuming tangible personal property under the Arkansas Compensating Tax Act of 1949, as amended, § 26-53-101 et seq.;
- (13) "Municipality" means any city or incorporated town in the State of Arkansas:

(14) "Ordinance" means an ordinance, resolution, or other appropriate legislative enactment of a legislative body.

(b) As used in this subchapter, "single transaction" shall be defined by ordinance of the county or municipality levying the tax. Every city or county ordinance adopted after January 1, 1998 which calls for an election to levy a local sales and use tax authorized by this subchapter or any other provision of the Arkansas Code shall contain a definition of the term "single transaction" which definition shall amend all other previous ordinances defining "single transaction." Effective January 1, 1998, the most recent definition of "single transaction" adopted prior to January 1, 1998 shall apply to and amend all previous local sales and use tax ordinances. It is the intent of this provision to require each city or county which levies a local sales and use tax to adopt uniform definitions of the term "single transaction" for all taxes levied by the city or county. This provision is limited to ordinances levying local sales and use taxes collected by the Department of Finance and Administration.

**History.** Acts 1985, No. 871, §§ 3, 9; A.S.A. 1947, §§ 13-1241, 13-1247; Acts 1987, No. 368, § 1; 1988 (4th Ex. Sess.), No. 26, § 1; 1991, No. 645, § 1; 1991, No. 646, § 1; 1997, No. 208, § 11; 1997, No. 1176, § 1.

**A.C.R.C.** Notes. The punctuation in the 1997 amendment to this section by No. 1176 is incorrect or does not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

Acts 1997, No. 208, § 1, codified as § 22-4-408, provided: "Legislative intent

and purpose. The General Assembly hereby acknowledges that many of the laws relating to individuals with disabilities are antiquated, functionally outmoded, derogatory, ambiguous or are inconsistent with more recently enacted provisions of the law. Consequently, it is the intent of the General Assembly and the purpose of this Act to clarify the relevant chapters of Titles 1, 6, 9, 13, 14, 16, 17, 20, 22, 23, and 27 of the Arkansas Code Annotated of 1987."

Publisher's Notes. The Arkansas Gross Receipts Tax Act of 1941, referred to in this section is codified as §§ 26-52-101 — 26-52-107, 26-52-201 — 26-52-208, 26-52-301, 26-52-303, 26-52-306, 26-52-307, 26-52-401, 26-52-402, 26-52-501 — 26-52-503, 26-52-508, and 26-52-510.

The Arkansas Compensating Tax Act of 1949, referred to in this section, is codified as §§ 26-53-101 — 26-53-106, 26-53-112,

26-53-114, 26-53-121 - 26-53-127.

Amendments. The 1997 amendment by No. 208 substituted "individuals with disabilities" for "handicapped persons" in (a)(2)(C).

The 1997 amendment by No. 1176 rewrote (b).

#### RESEARCH REFERENCES

UALR L.J. Survey — Bonds, 10 UALR L.J. 545.

#### **CASE NOTES**

Cited: Paragould Cablevision, Inc. v. City of Paragould, 930 F.2d 1310 (8th Cir. 1991).

### 14-164-304. Construction.

This subchapter shall be construed liberally to effectuate the legislative intent and the purposes of this subchapter as complete and independent authority for the performance of each and every act and thing herein authorized and all powers herein granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers.

**History.** Acts 1985, No. 871, § 22; A.S.A. 1947, § 13-1259.

#### **CASE NOTES**

**Cited:** Keeton v. Barber, 305 Ark. 147, 806 S.W.2d 363 (1991).

## 14-164-305. Subchapter supplemental.

(a) It is the specific intent of this subchapter that the provisions of this subchapter, and in particular § 14-164-303(b), and §§ 14-164-326 to 14-164-339, are supplemental to other constitutional or statutory provisions which may provide for the financing of capital improvements of a public nature or the securing and developing of industry.

(b) Nothing contained in this subchapter shall be deemed to be a restriction or limitation upon alternative means of financing previously available or hereafter made available to municipalities or counties for

the purposes set forth in this subchapter.

**History.** Acts 1985, No. 871, § 21; A.S.A. 1947, § 13-1258; Acts 1991, No. 646, § 2.

#### 14-164-306. Venue.

For the purposes of this subchapter, when it is necessary to determine whether publication or other activity has taken place within a municipality lying in more than one (1) county, or where suit shall be filed contesting an election in that municipality, then the publication, activity, or suit shall take place in the county in which a majority of the people living in the municipality reside.

**History.** Acts 1985, No. 871, § 17; A.S.A. 1947, § 13-1255.

## 14-164-307. Financing of facilities for industry.

To provide for the financing of facilities for the securing, developing, preserving, and maintaining of industry, municipalities and counties are authorized to own, acquire, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, contract concerning, or otherwise deal in or dispose of any industrial facilities.

**History.** Acts 1985, No. 871, § 6; A.S.A. 1947, § 13-1244.

## 14-164-308. Bonds generally — Authorizing ordinance.

Whenever a legislative body determines the need to issue bonds for capital improvement or industrial development purposes it shall authorize the issuance of the bonds by ordinance specifying the principal amount of bonds to be issued, the purpose or purposes for which the bonds are to be issued, and the maximum rate of any ad valorem tax to be levied and pledged to the retirement of the bonds.

**History.** Acts 1985, No. 871, § 4; A.S.A. 1947, § 13-1242.

#### **CASE NOTES**

Purpose for Issuance.

Where ordinance described courthouse improvements but did not make any reference to the construction of a parking lot,

the parking lot construction was not authorized by the ordinance. Keeton v. Barber, 305 Ark. 147, 806 S.W.2d 363 (1991).

## 14-164-309. Bonds generally — Election to authorize issuance.

(a) The question of the issuance of such bonds shall be submitted to the electors of the county or municipality at the general election or at a special election called for that purpose as provided in the ordinance and held in the manner provided in this subchapter.

(b) Except as otherwise provided in this subchapter, the election shall be held and conducted in the same manner as a special or general

election under the election laws of the state.

(c) The ordinance shall set forth the form of the ballot question or questions, which shall include a statement of the purpose or purposes

for which the bonds are to be issued and the maximum rate of any ad

valorem tax to be levied for payment of bonded indebtedness.

(d) Notice of the election shall be given by the clerk of the issuer by one (1) publication in a newspaper having general circulation within the municipality or county not less than ten (10) days prior to the election. No other publication or posting of a notice by any other public official shall be required.

(e) The election shall be held no earlier than thirty (30) days after the date of adoption of the ordinance in which the election is called by the

legislative body.

(f) The chief executive officer of the municipality or county shall proclaim the results of the election by issuing a proclamation and publishing it one (1) time in a newspaper having general circulation within the municipality or county.

(g)(1) The results of the election as stated in the proclamation shall be conclusive unless suit is filed in the circuit court in the county in which the issuer is located within thirty (30) days after the date of the

publication.

(2) No other action shall be maintained to challenge the validity of the bonds and of the proceedings authorizing the issuance of the bonds unless suit is filed in such circuit court within thirty (30) days after the date of the adoption of an ordinance authorizing the sale of the bonds.

**History.** Acts 1985, No. 871, § 4; A.S.A. 1947, § 13-1242.

Publisher's Notes. Acts 1985, No. 871, § 18, provided that any election called for the purpose of authorizing bonds for capital improvements or industrial development and any ordinances or resolutions of a legislative body or orders of a county court adopted in connection therewith prior to the effective date of that act would be deemed ratified and in full compliance with that act if the ordinance, order, or resolution calling the election or notice of the election was published at least one (1) time in a newspaper of general circulation in the municipality or county and all other

procedures followed applied substantially with the provisions of that act.

Acts 1985, No. 871, § 23 provided that any election theretofore called or held in substantial compliance with Acts 1985, No. 24 [repealed], for the purpose of authorizing bonds for capital improvements or industrial development, and any ordinances, resolutions, or proclamations of a legislative body or an executive officer of a legislative body adopted in connection therewith including, without limitation, any levy of a tax authorized under Acts 1985, No. 24 [repealed], would be deemed conclusively to have been accomplished in full compliance with Acts 1985, No. 871.

#### CASE NOTES

Cited: Paragould Cablevision, Inc. v. City of Paragould, 930 F.2d 1310 (8th Cir. 1991).

## 14-164-310. Bonds generally — Terms and conditions.

(a) As the ordinance or trust indenture as authorized in this subchapter may provide, the bonds may:

(1) Be in registered or other form;

(2) Be in such denominations;

- (3) Be exchangeable for bonds of another denomination;
- (4) Be made payable at such places within or without the state;

(5) Be issued in one (1) or more series;

(6) Bear such date or dates;

(7) Mature at such time or times;

(8) Be payable in such medium of payment;

(9) Be subject to such terms of redemption; and

(10) May contain such other terms, covenants, and conditions, including, without limitation, those pertaining to:

(A) The custody and application of the proceeds of the bonds;

(B) The collection and disposition of tax collections;(C) The maintenance of various funds and reserves;(D) The nature and extent of the pledge and security;

(E) The maintaining of taxes;(F) The remedies on default;

(G) The rights, duties, and obligations of the legislative body of the issuer and the trustee, if any, for the owners of the bonds; and

(H) The rights of the owners of the bonds.

(b) All bonds and notes issued under the provisions of this subchapter shall be and are declared to be negotiable instruments within the meaning of the negotiable instruments law of the state.

**History.** Acts 1985, No. 871, §§ 5, 16; A.S.A. 1947, §§ 13-1243, 13-1254.

## 14-164-311. Bonds generally — Interest rates.

(a) Bonds for capital improvements shall not bear a rate of interest in excess of two percent (2%) per annum above the Federal Reserve rate in effect at the time of the election authorizing the bonds.

(b) Industrial development bonds may bear such rate or rates of

interest as the ordinance shall provide.

**History.** Acts 1985, No. 871, § 5; A.S.A. 1947, § 13-1243.

## 14-164-312. Bonds generally — Trust indenture.

(a) The ordinance authorizing the bonds may provide for the execution by the chief executive officer of the issuer of a trust indenture which defines the rights of the owners of the bonds and provides for the appointment of a trustee for the owners of the bonds.

(b) The trust indenture may provide for the priority between and among successive issues and may contain any of the provisions set forth

in § 14-164-310 and any other terms, covenants, and conditions that are deemed desirable.

**History.** Acts 1985, No. 871, § 5; A.S.A. 1947, § 13-1243.

## 14-164-313. Bonds generally — Contents.

It shall be plainly stated on the face of each bond that it has been issued under the provisions of Arkansas Constitution, Amendment 62 and this subchapter.

**History.** Acts 1985, No. 871, § 5; A.S.A. 1947, § 13-1243.

## 14-164-314. Bonds generally — Execution.

The bonds shall be executed in the manner provided by the Registered Public Obligations Act of Arkansas, § 19-9-401 et seq., as that act may be amended.

**History.** Acts 1985, No. 871, § 5; A.S.A. 1947, § 13-1243.

## **14-164-315.** Bonds generally — Sale.

(a) Except as provided in subsection (b) of this section, the bonds may be sold at public or private sale for such price, including, without limitation, sale at a discount, and in such manner as the legislative body of the issuer may determine.

(b)(1) Bonds which are industrial development bonds shall be sold only at public sale after notice of the sale shall have been given not less than twenty (20) days prior to the sale by one (1) publication in a newspaper having bona fide circulation in the municipality or county issuing such bonds.

(2) Nothing contained in this subsection shall require the public sale of industrial development bonds which are to be exchanged for bonds of like amount, rate of interest, and length of issue.

**History.** Acts 1985, No. 871, §§ 5, 7; A.S.A. 1947, §§ 13-1243, 13-1245.

## 14-164-316. Bonds generally — Pledge of taxes generally.

The bonds shall be secured by, and contain a pledge of, any tax or combination of taxes authorized to pay the bonded indebtedness and shall be payable solely from the taxes authorized by this subchapter. However, the issuer is not prohibited from using other taxes, revenues, or receipts to retire the bonds.

**History.** Acts 1985, No. 871, § 5; A.S.A. 1947, § 13-1243.

## 14-164-317. Bonds generally — Pledge and collection of ad valorem taxes.

(a) The ad valorem tax pledged for payment of bonds shall constitute a special fund pledged as security for the payment of such indebtedness.

(b)(1) The ad valorem tax shall never be extended for any other purpose, nor collected for any greater length of time than necessary to retire such bonded indebtedness.

- (2) However, tax collections in excess of the amount required to retire the debt according to its terms may, subject to covenants entered into with the owners of the bonds, be pledged as security for the issuance of additional bonds if authorized by the electors.
  - (3) The tax for the additional bonds shall terminate within the time

provided for the tax originally imposed.

- (c) Upon retirement on the bonded indebtedness, any surplus tax collections which may have accumulated shall be transferred to the general fund of the issuer.
- (d) The collection of ad valorem taxes, or a portion thereof, may be suspended by the issuer when not required for the payment of the bonds, subject to any covenants with the owners of the bonds.

**History.** Acts 1985, No. 871, § 8; A.S.A. 1947, § 13-1246.

## 14-164-318. Bonds generally — Successive issues.

There may be successive bond issues for the purpose of financing the same capital improvements.

**History.** Acts 1985, No. 871, § 5; A.S.A. 1947, § 13-1243.

## 14-164-319. Bonds generally - Mortgage lien.

- (a) The ordinance or trust indenture authorized in § 14-164-310 or § 14-164-312 may, but need not, impose a foreclosable mortgage lien upon the capital improvements or industrial facilities financed with the proceeds of bonds issued under this subchapter.
- (b) The nature and extent of such mortgage lien may be controlled by the ordinance or trust indenture including, without limitation, provi-

sions:

- (1) Pertaining to the release of all or part of the land, buildings, or facilities from the mortgage lien;
- (2) Pertaining to the priority of the mortgage lien in the event of successive bond issues; and
- (3) Authorizing any owner of bonds, or a trustee on behalf of all owners, either at law or in equity, to enforce the mortgage lien and, by proper suit, compel the performance of the duties of the officials of the issuer set forth in this subchapter or in the ordinance or trust indenture authorizing and securing the bonds.

(c) References in this section to mortgage lien shall include a security interest in any personal property constituting the capital improvements or industrial facilities, or part thereof, financed with the proceeds of bonds issued under this subchapter.

**History.** Acts 1985, No. 871, § 13; A.S.A. 1947, § 13-1251.

## 14-164-320. Bonds generally — Liability.

No officer, employee, or member of the legislative body of the issuer shall be personally liable on any bonds issued under the provisions of this subchapter or for any damages sustained by any person in connection with any contracts entered into to carry out the purposes and intent of this subchapter unless that person has acted with a corrupt intent.

**History.** Acts 1985, No. 871, § 19; A.S.A. 1947, § 13-1257.

## 14-164-321. Bonds generally — Tax exemption.

Bonds and notes issued under the provisions of this subchapter and the income thereon shall be exempt from all state, county, and municipal taxes, including, without limitation, all income, property, and inheritance taxes.

**History.** Acts 1985, No. 871, § 15; A.S.A. 1947, § 13-1253.

## 14-164-322. Bonds generally — Multipurpose bonds.

(a) When bonds are to be issued for more than one (1) purpose the principal amount of bonds applicable to each purpose shall be stated on the ballot as a separate question and no bonds shall be issued for such purpose unless a majority of the electors voting on each separate question shall have approved the issuance of bonds for such purpose.

(b) Bonds that are approved by the electors for more than one (1)

purpose may be combined into a single issue.

**History.** Acts 1985, No. 871, §§ 4, 5; A.S.A. 1947, §§ 13-1242, 13-1243.

## 14-164-323. Bonds generally — Interim borrowing.

(a) If the issuance of bonds is authorized in accordance with the provisions of this subchapter, a municipality or county is authorized to obtain interim financing pending the delivery of all or any part of the bonds from such sources and upon such terms as the municipality or the county shall determine.

(b) As evidence of any indebtedness so incurred, the municipality or the county may execute and deliver its promissory note, or notes, and pledge to the payment thereof the tax or taxes approved by the voters to be pledged to the bonds, and to otherwise secure the notes as bonds

issued under this subchapter may be secured.

(c) The notes may bear such date or dates, may mature at such time or times, not exceeding three (3) years from their respective dates, may bear interest at such rate or rates, may be in such form, may be executed in such manner, may be payable at such place or places, may contain such provisions for prepayment prior to maturity and may contain such other terms, or covenants, and conditions as the ordinance may provide which are not inconsistent with the provisions of this subchapter.

**History.** Acts 1985, No. 871, § 14; A.S.A. 1947, § 13-1252.

## 14-164-324. Refunding bonds.

(a) Bonds may be issued under this subchapter for the purpose of refunding any outstanding bonds issued pursuant to Arkansas Constitution, Amendment 62 or prior amendments to the Arkansas Constitution repealed by Arkansas Constitution, Amendment 62.

(b)(1) The refunding bonds may be either sold for cash or delivered in

exchange for the outstanding obligations.

- (2) If sold for cash, the proceeds may be either applied to the payment of the obligations refunded or deposited in irrevocable trust for the retirement thereof either at maturity or on an authorized redemption date.
- (c) Refunding bonds shall in all respects be authorized, issued, and secured in the manner provided for the bonds being refunded, and shall have all the attributes of the refunded bonds. However, if the refunding bonds are not in a greater principal amount than the bonds being refunded the question of issuing such refunding bonds need not be submitted at an election.

(d)(1) The ordinance under which the refunding bonds are issued may provide that any refunding bonds shall have the same priority of lien on all sources of taxation or other income as originally pledged for

payment of the obligation refunded thereby.

(2) Alternatively, the ordinance may provide that refunding bonds to be issued to refund indebtedness originally created under Arkansas Constitution, Amendments 13 [repealed], 17 [repealed], 25 [repealed], or 49 [repealed] may be issued and secured in the manner provided in Arkansas Constitution, Amendment 62 and this subchapter if the question of the issuance of the refunding bonds is submitted to the electors in the manner provided in § 14-164-309.

(e)(1) Bonds may also be issued under the provisions of this subchapter for the purpose of refunding any outstanding revenue bonds, including bonds secured in whole or in part by revenues derived from any special tax pledged thereto, issued, whether or not issued prior or subsequent to April 15, 1985, to finance capital improvements of a

public nature if the question of the issuance of the refunding bonds is submitted to the electors in the manner provided in § 14-164-309.

(2)(A) The refunding bonds may be either sold for cash or delivered in

exchange for the outstanding obligations.

(B) If sold for cash, the proceeds may either be applied to the payment of the bonds being refunded or deposited in an irrevocable trust for the retirement thereof at maturity or on an authorized redemption date.

**History.** Acts 1985, No. 871, § 12; A.S.A. 1947, § 13-1250.

A.C.R.C. Notes. It is questionable whether Ark. Const. Amends. 13, 17, 25

and 49 are repealed in whole or whether only those provisions that conflict with Ark. Const., Art. 62 are repealed by Ark. Const., Art. 62.

### 14-164-325. Taxes not state revenues.

It is the express intent of the General Assembly that any tax levied under the authority of this subchapter by a municipality or county for the purpose of financing capital improvements of a public nature or facilities for the securing and developing of industry shall not constitute revenues of the state within the meaning of any constitutional or statutory provisions, but such tax shall at all times continue to be revenues of the particular municipality or county notwithstanding the participation or involvement, for the convenience of administration, by the Director of the Department of Finance and Administration or the State Treasurer in the manner authorized in this subchapter in any phase of collection, holding, or distribution of proceeds of any tax authorized under this subchapter.

**History.** Acts 1985, No. 871, § 2; A.S.A. 1947, § 13-1240.

## 14-164-326. Capital improvement bonds — Hotel and restaurant tax.

(a) Any municipality levying a tax upon the gross receipts of hotel and motel accommodations or upon the gross receipts of restaurants, cafes, cafeterias, and similar establishments is authorized to pledge all or a specified portion of the receipts of such tax to the retirement of bonds for capital improvements.

(b) However, no such pledge or the issuance of such bonds shall be effective unless the pledge or the issuance of the bonds has been approved by a majority of the electors of the municipality voting on the question at an election held substantially in the manner provided in

§ 14-164-328.

**History.** Acts 1985, No. 871, § 11; A.S.A. 1947, § 13-1249.

## 14-164-327. Capital improvement bonds — Local sales and use tax — Levy.

(a) In lieu of or in addition to the levying of an ad valorem tax to retire bonds for capital improvement purposes, the legislative body of a municipality or county may adopt an ordinance levying a local sales and use tax in the amount of one-fourth of one percent (.25%), one-half of one percent (0.5%), three-fourths of one percent (.75%), or one percent (1%) to retire the bonds in accordance with the terms of this section and \$\$ 14-164-328 — 14-164-335.

(b) A certified copy of the ordinance authorizing the levy of a local sales and use tax and the issuance of bonds secured thereby shall be provided to the director and to the Treasurer of State as soon as

practicable after the adoption thereof.

**History.** Acts 1985, No. 871, § 9; A.S.A. 1947, § 13-1247; Acts 1991, No. 765, § 1.

#### **CASE NOTES**

**Cited:** Hasha v. City of Fayetteville, 311 Ark. 460, 845 S.W.2d 500 (1993).

## 14-164-328. Capital improvement bonds — Local sales and use tax — Election to authorize.

(a)(1) On the date of adoption of an ordinance levying a local sales and use tax to retire the bonds, or within thirty (30) days following the adoption of the ordinance, the municipality or county shall provide by ordinance for the calling and holding of an election on such question as provided in § 14-164-309.

(2) In addition to the requirements of § 14-164-309, and in lieu of a reference to an ad valorem tax, if none is to be levied, there shall be set forth on the ballot a statement that a local sales and use tax of .... percent (.... %) shall be levied and pledged to the retirement of the

bonds approved by the voters.

(b) Following the election, the chief executive of the municipality or county shall issue his proclamation of the results of the election with reference to the local sales and use tax. The proclamation shall be published one (1) time in a newspaper having general circulation in the municipality or county.

(c)(1) Any person desiring to challenge the results of the election as published in the proclamation shall file such challenge in the circuit court in which the municipality or county is located within thirty (30)

days of the date of publication of the proclamation.

(2) Hearings of such matters of litigation shall be advanced on the docket of the courts and disposed of at the earliest feasible time.

**History.** Acts 1985, No. 871, § 9; A.S.A. 1947, § 13-1247; Acts 1991, No. 765, § 2.

# 14-164-329. Capital improvement bonds — Local sales and use tax — Effective dates for imposition and termination of tax levy.

- (a) The levy of such tax shall not be effective until after the election has been held and the issuance of bonds has been approved by the voters.
- (b) In order to provide time for the preparations for election set forth herein and to provide for the accomplishment of the administrative duties of the director, the following effective dates are applicable with reference to any such ordinance levving such tax:
- (1) If no election challenge is filed within thirty (30) days of the date of publication of the proclamation of the results of the election, the tax shall, unless delayed as provided in subdivision (b)(3) of this section, become effective on the first day of the first calendar month subsequent to the expiration of the thirty-day period for challenge.

(2) In the event of an election contest, the tax shall be collected as prescribed in subdivision (b)(1) of this section unless enjoined by court

order.

- (3)(A) The municipality or county may delay the effective date of the tax.
- (B) The delayed effective date shall be specified in the ordinance levying the tax and on the ballot approving the bonds or the tax, except in the event that the tax is replacing an existing tax. In such event, the ballot and the ordinance shall specify that the tax will replace the existing tax and that the effective date of the tax will be the day following the date the existing tax expires.

(C) The delayed effective date shall in any event be the first day of

a calendar month.

(D) The effective date shall not be delayed for more than twelve (12) months, unless the tax replaces an existing tax.

(c)(1)(A) If bonds are issued, the tax shall be abolished when there are no bonds outstanding to which such tax collections are pledged as

provided in this subchapter.

(B) If bonds have not been issued, the tax shall be abolished when it is determined by a roll call vote of two-thirds (%) of all the members elected to the municipality's or county's governing body that the bonds approved by the voters shall not be issued.

(C) Bonds shall not be deemed to be outstanding hereunder if the trustee for the bondholders provides the certificate provided for in

subdivision (c)(2)(A) of this section.

(2) In order to provide for the accomplishment of the administrative duties of the director and to protect the owners of the bonds, the tax shall be abolished on the first day of the calendar month subsequent to the expiration of thirty (30) days from the date there is filed with the

director a written statement signed by the chief executive officer of the municipality or county levying the tax and by the trustee for the bondholders, if a trustee is serving in such capacity, identifying the tax and the bonds, wherein either:

(A) The trustee certifies that the trustee has or will have sufficient funds set aside to pay the principal of and interest on the bonds when due at maturity or at redemption prior to maturity and the municipality or county levying the tax certifies that the tax is not pledged to any other bonds of such municipality or county; or

(B) The municipality or county levying the tax certifies that there are no longer any bonds outstanding payable from tax collections.

(3) In the case of subdivision (c)(2)(B) of this section, there shall be attached to the written statement proof satisfactory to the director that there are no longer any bonds outstanding payable from tax collections.

- (4) The chief executive officer of the municipality or county shall file the appropriate certificate not later than sixty (60) days after the bonds have been paid in full or funds to make payment in full have been set aside with the trustee.
- (d) After one (1) year has elapsed after the effective date of the abolishment of the tax, the State Treasurer shall remit the balance in any suspense account maintained by the State Treasurer in connection therewith directly to the municipality or county levying the tax.

History. Acts 1985, No. 871, § 9; A.S.A. 1947, § 13-1247; Acts 1989, No. 497, § 1; 1991, No. 645, § 2; 1993, No. 266, § 8; 1995, No. 101, § 1.

Publisher's Notes. Acts 1989, No. 497, § 3, provided that the amendments made by this act shall apply to bonds heretofore or hereafter issued under the authority of Ark. Const. Amend. 62 to the Constitution of the State of Arkansas and the sales and use taxes pledged to such bonds.

Amendments. The 1993 amendment

rewrote (b)(2).

The 1995 amendment inserted "unless delayed as provided in subdivision (b)(3) of this section" in (b)(1); and added (b)(3).

## 14-164-330. Capital improvement bonds — Local sales and use tax — Notice to Director of the Department of Finance and Administration.

- (a) As soon as is feasible and no later than ten (10) days following each of the events set forth in the ordinance with reference to the procedure for the adoption or abolition of the local sales and use tax and the effective dates of the action, the clerk shall notify the director of such event.
- (b) Accompanying the first of any such notices, the clerk shall provide to the director a map of the municipality or county clearly showing the boundaries thereof.

History. Acts 1985, No. 871, § 9; A.S.A. 1947, § 13-1247.

## 14-164-331. Capital improvement bonds — Local sales and use tax — Alteration of municipal boundaries.

(a) If a municipality in which a local sales and use tax has been imposed in the manner provided for in this subchapter thereafter changes or alters its boundaries, the clerk of the municipality shall forward to the director a certified copy of the ordinance annexing or detaching territory from the municipality and a map clearly showing the territory annexed or detached.

(b) After the receipt of the ordinance and map, any tax imposed under this subchapter shall be effective in the added territory or abolished in the detached territory on the first day of the first calendar month following the expiration of thirty (30) days from the date that the

annexation or detachment becomes effective.

**History.** Acts 1985, No. 871, § 9; A.S.A. 1947, § 13-1247.

## 14-164-332. Capital improvement bonds — Local sales and use tax — Pledge.

(a) Any moneys collected under this subchapter by the director acting as agent for any municipality or county which, as indicated by a certified copy of an ordinance of the municipality or county previously filed with the director and the State Treasurer, are pledged to secure the retirement of bonds authorized by this subchapter shall be trans-

mitted by the director to the State Treasurer.

(b) Notwithstanding the provisions of §§ 26-74-201 — 26-74-219, 26-74-221, 26-74-315 — 26-74-317, 26-75-201 — 26-75-221, 26-75-223, 26-75-317, and 26-75-318, in any municipality or county in which a local sales and use tax has been adopted in the manner provided for in this subchapter, and all or a portion of the tax is pledged to secure the payment of bonds as authorized by this subchapter, that portion of the tax pledged to retire the bonds shall not be repealed, abolished, or reduced so long as such bonds are outstanding and, subject to covenants entered into with owners of the bonds, the tax may be pledged as security for the issuance of additional bonds if authorized by the electors.

**History.** Acts 1985, No. 871, § 9; A.S.A. 1947, § 13-1247.

#### **CASE NOTES**

"Operating Penny" Statute.

Legislation implementing Ark. Const., Amend. 62, did not repeal the "operating penny" statute; rather, it recognized the continuation of the statute in §§ 14-164332(b), 14-164-333(2)(a), 14-164-336(c) and 14-164-337(c)(1). Hasha v. City of Fayetteville, 311 Ark. 460, 845 S.W.2d 500 (1993).

## 14-164-333. Capital improvement bonds — Local sales and use tax — Administration, collection, etc.

- (a)(1) A sales and use tax levied pursuant to the authority granted by this subchapter shall be administered and collected subject to the provisions of § 26-74-212 or § 26-75-216, whichever shall be applicable.
  - (2)(A) The director shall perform all functions incidental to the administration, collection, enforcement, and operation of the tax, as provided in §§ 26-74-201 26-74-219, 26-74-221, 26-74-315 26-74-317, 26-75-201 26-75-221, 26-75-223, 26-75-317, and 26-75-318. Provided, however, to the extent the provisions of § 14-164-329 conflict with any provisions of § 26-74-101 et seq. or § 26-75-101 et seq., or any other law, § 14-164-329 shall be deemed to supersede the conflicting statutes.

(B) The tax levied in this subchapter on new and used motor vehicles shall be collected by the director directly from the purchaser

in the manner prescribed in § 26-52-510.

(b)(1)(A) In each municipality or county where a local sales and use tax has been imposed in the manner provided in this subchapter, every retailer shall add the tax imposed by the Arkansas Gross Receipts Tax Act of 1941, the Arkansas Compensating Tax Act of 1949, and the tax imposed by this subchapter to the sale price, and when added, the combined tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price.

(B) When the sale price in the municipality or county involves a fraction of a dollar, the two (2) combined taxes shall be added to the sales price according to a schedule and bracket system formula established by the director. However, a retailer shall be entitled to the same discount with respect to tax remitted under this subchapter as is authorized for the collection and remission of gross receipts taxes

to the state as authorized in § 26-52-503.

(2)(A) Any fraction of one cent  $(1\phi)$  of tax which is less than one-half of one cent  $(0.5\phi)$  shall not be collected.

(B) Any fraction of one cent  $(1\phi)$  of tax equal to one-half of one cent

 $(0.5\phi)$  or more shall be collected as a whole cent  $(1\phi)$  of tax.

- (c) In the event the General Assembly, or the electors of the state, shall either increase or decrease the rate of the state gross receipts tax, the combined rate of the state gross receipts tax and the local sales tax shall be the sum of the two (2) rates. In such event, the director may publish a schedule of taxes due with reference to sales involving a fraction of one dollar (\$1.00).
- (d)(1) Each vendor who is liable for one (1) or more city sales or use taxes shall report a combined city sales tax and a combined city use tax on his sales and use tax report. The combined city sales tax is equal to the sum of all sales taxes levied by a city under this subchapter or any other provision of the Arkansas Code. The combined city use tax is

equal to the sum of all use taxes levied by a city under this subchapter or any other provision of the Arkansas Code. This provision applies only to taxes collected by the Director of the Department of Finance and Administration.

(2) Each vendor who is liable for one (1) or more county sales or use taxes shall report a combined county sales tax and a combined county use tax on his sales and use tax report. The combined county sales tax is equal to the sum of all sales taxes levied by a county under this subchapter or any other provision of the Arkansas Code. The combined county use tax is equal to the sum of all use taxes levied by a county under this subchapter or any other provision of the Arkansas Code. This provision applies only to taxes collected by the Director of the Department of Finance and Administration.

**History.** Acts 1985, No. 871, § 9; A.S.A. 1947, § 13-1247; Acts 1995, No. 565, § 21; 1997, No. 1176, § 2

1997, No. 1176, § 2. **Publisher's Notes.** The Arkansas Gross Receipts Tax Act of 1941 referred to in this section is codified as §§ 26-52-101 — 26-52-107, 26-52-201 — 26-52-208, 26-52-301, 26-52-303, 26-52-306, 26-52-307, 26-52-401, 26-52-402, 26-52-501 — 26-52-

503, 26-52-508, and 26-52-510.

The Arkansas Compensating Tax Act of 1949 referred to in this section is codified as §§ 26-53-101 — 26-53-106, 26-53-112, 26-53-114, and 26-53-121 — 26-53-127.

Amendments. The 1995 amendment added the second sentence in (a)(2)(A).

The 1997 amendment added (d).

#### CASE NOTES

"Operating Penny" Statute.

Legislation implementing Ark. Const., Art. 62 did not repeal the "operating penny" statute; rather, it recognized the continuation of the statute in §§ 14-164-

332(b), 14-164-333(a)(2)(A), 14-164-336(c) and 14-164-337(c)(1). Hasha v. City of Fayetteville, 311 Ark. 460, 845 S.W.2d 500 (1993).

## 14-164-334. Capital improvement bonds — Local sales and use tax — Single transactions.

- (a) Any sales and use tax levied pursuant to this subchapter shall be levied and collected only on the first two thousand five hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price from a single transaction.
- (b)(1) For any taxpayer not subject to the levy of a use tax on tangible personal property brought into the State of Arkansas for storage until such property is subsequently initially used in the State of Arkansas, the use tax portion of the local sales and use tax authorized by this subchapter shall be computed on each purchase of the property by the taxpayer as if all such property was subject upon purchase to such use tax up to a maximum of twenty-five dollars (\$25.00) per single transaction.
- (2) The taxes so computed in the preceding sentence shall be aggregated on a monthly basis and the aggregate monthly amount shall be divided by the sum of the total purchases of the property on which the taxes are computed and the quotient shall be multiplied by the amount

of the taxpayer's property subsequently initially used and subject to levy of such use tax within the municipality or county during the month for which the monthly aggregate tax figure was computed, and the product shall be the amount of such use tax liability for the taxpayer for the month computed.

**History.** Acts 1985, No. 871, § 9; A.S.A. **Amendments.** The 1993 amendment 1947, § 13-1247; Acts 1993, No. 669, § 1. rewrote (a).

## 14-164-335. Capital improvement bonds — Local sales and use tax — Reports.

Vendors collecting, reporting, and remitting such sales and use taxes shall show sales taxes as a separate entry on the tax report form filed with the director.

**History.** Acts 1985, No. 871, § 9; A.S.A. 1947, § 13-1247.

## 14-164-336. Local Sales and Use Tax Trust Fund.

(a) There is created a trust fund for the remittance of local sales and use taxes collected under this subchapter which shall be known as "the Local Sales and Use Tax Trust Fund," which trust fund shall be held apart from the State Treasury by the State Treasurer and shall be administered by the State Treasurer as provided in this section, in addition to other duties of the State Treasurer prescribed by law.

(b) The State Treasurer shall not deposit any such moneys into the State Treasury or into General Revenues, but shall hold such moneys apart, in trust, and shall deposit such moneys as cash funds into the Local Sales and Use Tax Trust Fund established by this subchapter.

(c) The State Treasurer shall transmit monthly to the treasurer of the municipality or county, as the case may be, or in the alternative, to a bank or other depository designated by the municipality or county, the moneys of the municipality or county held in the Local Sales and Use Tax Trust Fund established by this subchapter, subject to the charges payable and retainage authorized by §§ 26-74-201 — 26-74-219, 26-74-221, 26-74-315 — 26-74-317, 26-75-201 — 26-75-221, 26-75-223, 26-75-317, and 26-75-318.

**History.** Acts 1985, No. 871, § 9; A.S.A. 1947, § 13-1247.

#### CASE NOTES

"Operating Penny" Statue.

Legislation implementing Ark. Const. Amend. 62 did not repeal the "operating penny" statute; rather, it recognized the continuation of the statute in §§ 14-164-

332(b), 14-164-333(a)(2)(A), 14-164-336(c) and 14-164-337(c)(1). Hasha v. City of Fayetteville, 311 Ark. 460, 845 S.W.2d 500 (1993).

## 14-164-337. Pledge of preexisting sales and use tax.

(a) In any municipality or county which has in effect the levy of a local sales and use tax, the legislative body may by ordinance pledge all or a specified portion of the existing tax to retire its bonds as provided in this subchapter.

(b)(1) No pledge of an existing local sales and use tax levy shall be effective unless the issuance of bonds has been approved by the voters of the municipality or county issuing the bonds at an election as

provided in § 14-164-328.

(2)(A) The ballot form in an election to issue bonds secured by the pledge of an existing local sales and use tax levy shall be limited to the question or questions concerning the proposed bonds and shall not resubmit the levy of the tax.

(B) The ballot shall contain a statement that the existing sales and

use tax shall be pledged to the retirement of the bonds.

(c)(1) In any county which has in effect a county local sales and use tax, a municipality therein may by ordinance pledge all or any portion of such tax to which the municipality is entitled to receive to retire bonds of the municipality issued under this subchapter.

(2) As long as any bonds so authorized and issued are outstanding, the local sales and use tax shall continue to be levied and collected in such municipality until the bonds are retired, notwithstanding the

repeal or abolishment of such countywide tax.

(d) In any county which has in effect a county local sales and use tax, a municipality therein may by ordinance pledge all or a portion of its share of the county tax to retire bonds of the county issued under this subchapter. All such amounts pledged shall be used by the county as its funds to the extent necessary to pay debt service on such bonds and, if not so necessary, shall be transferred by or on behalf of the county to the municipality.

(e) In any municipality or county in which an existing local sales and use tax is pledged to secure the payment of bonds authorized by this subchapter, that portion of the tax pledged to secure the payment of bonds shall not be repealed, abolished, or reduced so long as any of such

bonds are outstanding.

(f)(1) Any moneys collected which, as indicated by a certified copy of an ordinance of the municipality or county previously filed with the director and the State Treasurer, are pledged, under the provisions of any act, to secure the retirement of bonds authorized by this subchapter, shall be transmitted by the director to the State Treasurer.

(2) The State Treasurer shall not deposit any such moneys into the State Treasury or into general revenues, but shall hold such moneys apart, in trust, and shall deposit such moneys as cash funds into the Local Sales and Use Tax Trust Fund established by this subchapter.

(3) The State Treasurer shall transmit monthly to the treasurer of the municipality or county, as the case may be, or, in the alternative, to a bank or other depository designated by the municipality or county, the

moneys of the municipality or county held in the Local Sales and Use Tax Trust Fund established by this subchapter, subject to the charges payable and retainage authorized by  $\S$  26-74-201 — 26-74-219, 26-74-221, 26-74-315 — 26-74-317, 26-75-201 — 26-75-221, 26-75-223, 26-75-317, and 26-75-318.

(4)(A) Upon receipt of a written statement signed by the trustee for the bondholders that the trustee has or will have set aside sufficient funds to pay when due at maturity or at redemption prior to maturity the principal of and interest on the bonds to which such tax has been

pledged; or

(B) If no trustee is serving in such capacity, a written statement signed by the municipality or county pledging the tax, or by the municipality or county issuing the bonds, or both, to the effect that the bonds to which the tax is pledged have been fully paid and are no longer outstanding, the State Treasurer shall make payments directly to the treasurer of the municipality or county and the pledge of the tax shall cease.

(g) Every city or county ordinance adopted after January 1, 1998 which calls for an election to levy a local sales and use tax authorized by this subchapter or any other provision of the Arkansas Code shall contain a definition of the term "single transaction" which definition shall amend all other previous ordinances defining "single transaction." Effective January 1, 1998, the most recent definition of "single transaction" adopted prior to January 1, 1998 shall apply to and amend all previous local sales and use tax ordinances. It is the intent of this provision to require each city or county which levies a local sales and use tax to adopt uniform definitions of the term "single transaction" for all taxes levied by the city or county. This provision is limited to ordinances levying local sales and use taxes collected by the Department of Finance and Administration.

**History.** Acts 1985, No. 871, § 10; A.S.A. 1947, § 13-1248; Acts 1989, No. 497, § 2; 1991, No. 765, § 3; 1997, No. 1176, § 3.

**Publisher's Notes.** Acts 1989, No. 497, § 3, provided that the amendments made

by this act shall apply to bonds heretofore or hereafter issued under the authority of Ark. Const. Amend. 62 and the sales and use taxes pledged to such bonds.

Amendments. The 1997 amendment added (g).

#### **CASE NOTES**

"Operating Penny" Statute.

Legislation implementing Ark. Const., Art. 62 did not repeal the "operating penny" statute; rather, it recognized the continuation of the statute in §§ 14-164332(b), 14-164-333(a)(2)(A), 14-164-336(c) and 14-164-337(c)(1). Hasha v. City of Fayetteville, 311 Ark. 460, 845 S.W.2d 500 (1993).

## 14-164-338. Alternative to issuance of bonds.

(a) If a legislative body determines that a sales and use tax of one percent (1%) or less authorized by § 14-164-327 would, if levied for no longer than twenty-four (24) months, produce sufficient revenue to finance capital improvements of a public nature without resorting to a bond issue, the legislative body may dispense with the issuance of bonds, levy the tax for no longer than twenty-four (24) months, and appropriate the resulting revenues, subject to the Arkansas Constitution, Article 12, § 4, paragraphs 2-4, provided:

(1) A majority of the qualified electors of the county or municipality voting on the question at a general or special election shall have approved the tax and the purpose of the capital improvements; and

(2) The revenues from the tax are expended solely for the purpose

authorized by the electorate.

(b) The portion of the tax authorized by § 14-164-327 which is not utilized under this section may be used as otherwise provided in this

subchapter.

(c) The provisions of this section shall not preclude or affect the ability of a municipality or county to levy a sales and use tax beyond the twenty-four month period, unless so restricted on the ballot, or for less than the twenty-four month period, if stated on the ballot, under  $\S\S 26-74-201 - 26-74-223$ , 26-74-201 - 26-74-201 - 26-75-201 - 26-75-223, and 26-75-301 - 26-75-318 and use all or a portion of the proceeds thereof to finance capital improvements of a public nature, with or without issuing bonds and with or without an election approving the use of the tax collections for capital improvements.

(d) The purpose of this subsection is to clarify that this section does not now, as amended, nor did it previously, limit the authority of municipalities and counties to levy taxes for twenty-four (24) months only under §§ 26-74-201-26-74-223, 26-74-301-26-74-319, 26-75-201-26-75-223, and 26-75-301-26-75-318 and use the proceeds thereof to finance capital improvements, and the General Assembly hereby finds and determines that §§ 26-74-201-26-74-223, 26-74-301-26-74-319, 26-75-201-26-75-223, and 26-75-301-26-75-318 each provide for the levy of up to a one percent (1%) sales and use tax and the use thereof for any purpose for which the general funds of the municipality or county may be used unless restricted on the ballot to a specified purpose.

(e) The revenues derived from this tax may also be used to retire existing bonds issued for the acquisition, renovation, or construction of

capital improvements.

**History.** Acts 1988 (4th Ex. Sess.), No. 25, § 1; 1989, No. 458, § 1; 1991, No. 765, § 4; 1992 (1st Ex. Sess.), No. 36, § 1; 1993, No. 1014, § 1.

A.C.R.C. Notes. References to "this subchapter" in §§ 14-164-301 — 14-164-

337 may not apply to this section, which was enacted subsequently.

Amendments. The 1992 (1st Ex. Sess.) amendment, in (a), substituted "and" for "or" following "that a sales," deleted "or any other local tax" following "one percent

(1%) or less," and substituted "14-164-327" for "law"; and added (b)-(d).

The 1993 amendment added (e).

#### **CASE NOTES**

#### Amendments.

In 1988, by Act 25, the General Assembly amended this section to provide that a city, as an alternative to issuing capital improvement bonds, can construct pay-asyou-go capital improvements by levying a

"bond penny" for up to twelve months (now 24 months) when that penny, over a twelve-month period (now 24 months), will be sufficient to construct the improvement. Hasha v. City of Fayetteville, 311 Ark. 460, 845 S.W.2d 500 (1993).

## 14-164-339. Simultaneous pledge of local sales and use tax.

(a)(1) Any municipality levying a local sales and use tax pursuant to the provisions of § 26-75-201 et seq. may, simultaneously with such levy, pledge all or a specified portion of such tax to retire bonds for the

purposes set forth in § 14-164-303(a)(2).

(2) The ballot form in a municipal election to levy a local sales and use tax pursuant to the provisions of § 26-75-208 and to simultaneously pledge all or a specified portion of such tax to retire bonds as provided in this subchapter shall be headed with the question of approval or disapproval of such tax and shall be followed by the question or questions of the issuance of the bonds.

(3) The question or questions of the issuance of bonds shall also contain a statement describing the extent to which the tax, if approved, may be pledged to retire the bonds which are approved by the voters of

the municipality.

(4) The election shall be conducted as provided in §§ 14-164-309 and 14-164-328, and the bonds shall be authorized, issued, and secured as

provided in this subchapter.

(b)(1) Any county levying a local sales and use tax pursuant to the provisions of § 26-74-201 et seq. may, simultaneously with such levy, pledge all or a specified portion of such tax to retire bonds for the

purposes set forth in § 14-164-303(a)(2).

(2) The ballot form in a county election to levy a local sales and use tax pursuant to the provisions of § 26-74-208 and to simultaneously pledge all or a specified portion of its share of such tax to retire bonds as provided in this subchapter shall be headed with the question of approval or disapproval of such tax and shall be followed by the question or questions of the issuance of the bonds.

(3) The question or questions of the issuance of bonds shall also contain a statement describing the extent to which the tax, if approved, may be pledged to retire the bonds which are approved by the voters of

the county.

(4) The election shall be conducted as provided in §§ 14-164-309 and 14-164-328, and the bonds shall be authorized, issued, and secured as provided in this subchapter.

(c) In any municipality or county in which a local sales and use tax is adopted pursuant to § 26-75-201 et seq. or § 26-74-201 et seq., respectively, and pledged to secure the payment of bonds as authorized by this subchapter, that portion of the tax pledged to secure the payment of bonds shall not be repealed, abolished, or reduced so long as

any of such bonds are outstanding.

(d) In any municipality or county in which a local sales and use tax is approved and the issuance of bonds disapproved in an election held pursuant to subsection (a) or (b) of this section, revenues derived from such local sales and use tax may be utilized by the municipality or county for any valid governmental purpose.

(e)(1) Any moneys collected which, as indicated by a certified copy of an ordinance of the municipality or county previously filed with the director and the State Treasurer, are pledged, under the provisions of any act, to secure the retirement of bonds authorized by this subchapter, shall be transmitted by the director to the State Treasurer.

(2) The State Treasurer shall not deposit any such moneys into the State Treasury or into general revenues, but shall hold such moneys apart, in trust, and shall deposit such moneys as cash funds into the Local Sales and Use Tax Trust Fund established by this subchapter.

(3) The State Treasurer shall transmit monthly to the treasurer of the municipality or county, as the case may be, or in the alternative, to a bank or other depository designated by the municipality or county, the moneys of the municipality or county held in the Local Sales and Use Tax Trust Fund established by this subchapter, subject to the charges payable and retainage authorized by §§ 26-74-201 — 26-74-219, 26-74-221, 26-74-315 — 26-74-317, 26-75-201 — 26-75-221, 26-75-223, 26-75-317, and 26-75-318.

**History.** Acts 1991, No. 646, § 3. **A.C.R.C. Notes.** References to "this subchapter" in §§ 14-164-301 — 14-164-

337 may not apply to this section which was enacted subsequently.

## 14-164-340. Alternative to issuance of bonds — Criminal justice projects.

(a) In addition to the options provided for by § 14-164-338 for financing capital improvements of a public nature, if a legislative body determines that a sales and use tax of one percent (1%) or less authorized by § 14-164-327 would, if levied for no longer than thirty-six (36) months, produce sufficient revenue to finance capital improvements for criminal justice purposes without resorting to a bond issue, the legislative body may dispense with the issuance of bonds, levy the tax for no longer than the thirty-six month period, and appropriate the resulting revenues, subject to Arkansas Constitution, Article 12, § 4, provided that:

(1) A majority of the qualified electors of the county or municipality voting on the question at a general or special election shall have approved the tax and the projects of capital improvements for criminal

justice purposes; and

(2) The revenues from the tax are expended solely for the projects authorized by the electorate.

(b) Under this section, the term "capital improvements for criminal justice purposes" means, whether obtained by purchase, lease, construction, reconstruction, restoration, improvement, alteration, repair, or other means, any physical public facility, betterment, or improvement with the purpose of furthering or promoting law enforcement or the apprehension, prosecution, probation, rehabilitation, or detention of any criminals, accused defendants, suspects, or juvenile detainees, and any preliminary plans, studies, or surveys relative thereto; land or rights in land, including, without limitations, leases, air rights, easements, rights-of-way, or licenses; and any furnishings, machinery, vehicles, apparatus, or equipment for any such public facility or betterment or improvement, which shall include, but is not limited to. the following: any and all facilities for city or town halls, courthouses and other administrative, executive, or other public offices for law enforcement officials or agencies; court facilities; jails; police stations and sheriffs' offices; police precincts or sheriffs' stations or substations; law enforcement training facilities; probation or parole offices and facilities; alternative learning centers; county and municipal criminal detention and correctional facilities; and juvenile detention facilities.

(c) The portion of the tax authorized by § 14-164-327 which is not utilized under this section may be used as otherwise provided in this

subchapter.

(d) The provisions of this section shall not preclude or affect the ability of a municipality or county to levy a sales and use tax beyond the thirty-six month period, unless so restricted on the ballot, or for less than the thirty-six month period, if stated on the ballot, under §§ 26-74-201 — 26-74-223, 26-74-301 — 26-74-319, 26-75-201 — 26-75-223, and 26-75-301 — 26-75-318, and use all or a portion of the proceeds thereof to finance capital improvements for criminal justice purposes, with or without issuing bonds and with or without an election approv-

ing the use of the tax collections for capital improvements.

(e)(1) This section shall not limit the authority of municipalities and counties to levy taxes for thirty-six (36) months or less only under  $\S\S\ 26-74-201\ -\ 26-74-223$ ,  $26-74-301\ -\ 26-74-319$ ,  $26-75-201\ -\ 26-75-223$ , and  $26-75-301\ -\ 26-75-318$ , and use the proceeds thereof to finance capital improvements, and the General Assembly hereby finds and determines that  $\S\S\ 26-74-201\ -\ 26-74-223$ ,  $26-74-301\ -\ 26-74-319$ ,  $26-75-201\ -\ 26-75-223$ , and  $26-75-301\ -\ 26-75-318$  each provide for the levy of up to a one percent (1%) sales and use tax and the use thereof for any purpose for which the general funds of the municipality or county may be used unless restricted on the ballot to a specified purpose.

(2) This section is intended to supplement all other laws which are designed to finance capital improvements for county and municipal governments and, when applicable in accordance with the provisions of this section, may be used by a county or a municipality as an alternative

to financing capital improvements for criminal justice purposes.

(f) The revenues derived from this tax may also be used to retire existing bonds issued for the acquisition, renovation, or construction of capital improvements for criminal justice purposes.

(g) The revenues derived from this tax may also be used to establish a trust fund whose income would provide operating funds for the same

purposes enumerated above in subsection (b) of this section.

(h)(1) The purpose of this section is to authorize an extension of the tax authorized by § 14-164-327 for an additional period of twelve (12) months.

(2) This section shall not be construed to authorize the imposition of any tax in addition to that authorized by § 14-164-327.

**History.** Acts 1994 (2nd Ex. Sess.), No. 64, § 1.

## SUBCHAPTER 4 — LOCAL GOVERNMENT CAPITAL IMPROVEMENT REVENUE BOND ACT

SECTION.		SECTION.	
14-164-401.	Title.	14-164-411.	Bonds — Payment — Secu-
14-164-402.	Definitions.		rity.
14-164-403.	Construction.	14-164-412.	Bonds — Mortgage lien.
14-164-404.	Subchapter supplemental.	14-164-413.	Bonds — Special obligations.
14-164-405.	Bonds — Issuance generally.	14-164-414.	Bonds — Liability of legisla-
	n 1 m 11		
14-164-406.	Bonds — Terms and condi-		tive body's officers, em-
14-164-406.	Bonds — Terms and conditions.		tive body's officers, employees, or members.
		14-164-415.	,
14-164-407.	tions.		ployees, or members.  Bonds — Successive issues.
14-164-407. 14-164-408.	tions. Bonds — Trust indenture.	14-164-416.	ployees, or members.
14-164-407. 14-164-408. 14-164-409.	tions.  Bonds — Trust indenture.  Bonds — Contents.	14-164-416. 14-164-417.	ployees, or members.  Bonds — Successive issues.  Bonds — Tax exemption.

Publisher's Notes. Acts 1985, No. 976 confirmed and continued the authority of municipalities to levy the hotel and restaurant tax and to pledge the proceeds of that tax to tourism bonds by ordinance subject to referendum but without a prior vote of the people. It declared the proceeds of any hotel and restaurant tax pledged to tourism bonds issued under Acts 1971, No. 380, or bonds issued under the Local Government Capital Improvement Revenue Bond Act of 1985, § 14-164-401 et seq. for tourism projects, to be project revenues of the project financed. It further provided that the hotel and restaurant tax is not a "tax" as taxes are normally understood and intended for government support, but is a special levy paid and collected by those persons and entities peculiarly associated with and benefited by tourism. However, since the Local Government Bond Act of 1985, § 14-164-301

et seq. makes specific reference to hotel and restaurant taxes, and the Local Government Capital Improvement Revenue Bond Act of 1985, § 14-164-401 et seq. does not, it is uncertain which of these acts was intended to be referred to by Acts 1985, No. 976.

Acts 1987, No. 58, § 4, provided that the purpose of this act is to authorize municipalities and counties to finance all, or a portion of, capital improvements by issuing revenue bonds, a portion of the proceeds of which may be used to pay the costs of all, or a portion, of capital improvements and expenses of issuing the bonds and a major portion of the proceeds of which may be invested in consideration of contracts to make payments at least sufficient, alone or with other available revenues pledged, to pay the principal of, premium, if any, and interest on the bonds when due, and the General Assembly de-

clared that the issuance of such bonds for such purposes is a public purpose for the issuance of revenue bonds under Ark. Const. Amend. 65.

Effective Dates. Acts 1987, No. 58, § 7: Feb. 18, 1987. Emergency clause provided: "It is hereby found and is hereby declared by the General Assembly of the State of Arkansas that for the benefit of the people of this State, the increase of their commerce, welfare and prosperity and the improvement and maintenance of their health and living conditions, it is essential and necessary that additional sources for the payment of revenue bonds be authorized to assist in the financing of capital improvements to which this act pertains. Therefore, an emergency is hereby declared to exist and this act, be-

ing necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1987, No. 369, § 3: Mar. 23, 1987. Emergency clause provided: "It has been found and it is hereby declared that certain municipalities in this state cannot finance facilities for nonprofit organizations engaged primarily in public health, safety and disaster relief at affordable costs except by the use of bonds as authorized hereby and that there is an immediate need for facilities for such organizations, which serve important public functions. Therefore, an emergency is declared and this Act, being necessary for the public peace, health and safety, shall be in force upon its passage and approval."

### 14-164-401. Title.

This subchapter shall be referred to and may be cited as the "Local Government Capital Improvement Revenue Bond Act of 1985."

**History.** Acts 1985, No. 974, § 1; A.S.A. 1947, § 13-1261.

## 14-164-402. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Bonds" means bonds issued pursuant to this subchapter;

(2) "Capital improvements" means any of the following: City or town halls, courthouses, and administrative, executive, or other public offices; court facilities; jails; police and sheriff stations, apparatus, and facilities; firefighting facilities and apparatus; public health facilities and apparatus; hospitals, nursing homes, and similar extended-care facilities; facilities for nonprofit organizations engaged primarily in public health, health systems support, safety, disaster relief, and related activities; residential housing for low and moderate income, elderly, or individuals with disabilities and families; parking facilities and garages; educational and training facilities for public employees; auditoriums; stadiums; convention, meeting, or entertainment facilities; ambulance and other emergency medical service facilities; civil defense facilities; air and water pollution control facilities; drainage and flood control facilities; storm sewers; arts and crafts centers; museums; libraries; public parks, playgrounds, or other public open space; marinas; swimming pools, tennis courts, golf courses, camping facilities, gymnasiums, and other recreational facilities; tourist information and assistance centers; historical, cultural, natural, or folklore sites; fair and exhibition facilities; streets and street lighting, alleys, sidewalks, roads, bridges, and viaducts; airports, passenger or freight

terminals, hangars, and related facilities; barge terminals, ports, harbors, ferries, wharves, docks, and similar marine services; slack water harbors, water resource facilities, waterfront development facilities, and navigational facilities; public transportation facilities; public water systems and related transmission and distribution facilities, storage facilities, wells, impounding reservoirs, treatment plants, lakes, dams, watercourses, and water rights; sewage collection systems and treatment plants; maintenance and storage buildings and facilities; incinerators; garbage and solid waste collection disposal, compacting, and recycling facilities of every kind; gas and electric generation, transmission, and distribution systems, including without limiting the generality of the foregoing, hydroelectric generating facilities, dams, powerhouses, and related facilities; and social and rehabilitative service facilities;

(3) "Chief executive" means the mayor of a municipality or the county judge of a county;

(4) "Clerk" means the clerk or recorder of a municipality or county

clerk of a county;

(5) "County" means any county in the State of Arkansas;

(6) "Issuer" means a municipality or a county;

(7) "Legislative body" means the quorum court of a county or the council, board of directors, board of commissioners, or similar elected governing body of a city or town;

(8) "Municipality" means any city or incorporated town in the State

of Arkansas;

(9) "Ordinance" means an ordinance, resolution, or other appropriate legislative enactment of a legislative body;

(10) "Project" means all, any combination, or any part of the capital

improvements defined in subdivision (2) of this section;

(11) "Project revenues" means revenues derived from the capital improvements financed, in whole or in part, with the proceeds of bonds

issued under this subchapter;

(12) "Revenues" means project revenues or any other special fund or source other than taxes or assessments for local improvements including, without limitation, any acquired with bond proceeds and the revenues to be derived from them, and any other user fees, charges or revenues derived from the operations of any municipality or county and any agency, board, commission, or instrumentality thereof;

(13) "Revenue Bonds" means all bonds, notes, certificates or other instruments or evidences of indebtedness the repayment of which is secured by user fees, charges or other revenues (other than assessments

for local improvements and taxes):

(i) Derived from the project or improvements financed in whole or in part by such bonds, notes, certificates or other instruments or evidences of indebtedness;

(ii) From the operations of any government unit; or

(iii) From any other special fund or source other than assessments for local improvements and taxes.

**History.** Acts 1985, No. 974, § -2; A.S.A. 1947, § 13-1262; Acts 1987, No. 58, § 1; 1987, No. 369, § 1; 1997, No. 208, § 12; 1997, No. 1130, § 1.

A.C.R.C. Notes. Acts 1997, No. 208, § 1, codified as § 22-4-408, provided: "Legislative intent and purpose. The General Assembly hereby acknowledges that many of the laws relating to individuals with disabilities are antiquated, functionally outmoded, derogatory, ambiguous or are inconsistent with more recently enacted provisions of the law. Consequently, it is the intent of the General Assembly and the purpose of this Act to clarify the relevant chapters of Titles 1, 6, 9, 13, 14, 16, 17, 20, 22, 23, and 27 of the Arkansas Code Annotated of 1987."

The 1997 amendment to this section by No. 1130 contains grammatical or stylistic errors. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the language.

The subsection designations in the 1997 amendment to this section by No. 1130 are incorrect or do not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the formatting.

The punctuation in the 1997 amendment to this section by No. 1130 is incorrect or does not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

Amendments. The 1997 amendment by No. 208 substituted "individuals with disabilities" for "handicapped persons" in the middle of (2).

The 1997 amendment by No. 1130 inserted "and any other user fees, charges or revenues ... commission, or instrumentality thereof" in (12); and added (13).

### 14-164-403. Construction.

This subchapter shall be construed liberally to effectuate the legislative intent and the purposes of this subchapter as complete and independent authority for the performance of each and every act and thing herein authorized and all powers granted in this subchapter shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers.

**History.** Acts 1985, No. 974, § 11; A.S.A. 1947, § 13-1270.

## 14-164-404. Subchapter supplemental.

It is the specific intent of this subchapter that the provisions hereof are supplemental to other constitutional or statutory provisions which may provide for the financing of capital improvements.

**History.** Acts 1985, No. 974, § 10; A.S.A. 1947, § 13-1269.

## 14-164-405. Bonds — Issuance generally.

(a) Municipalities and counties are authorized to issue bonds for capital improvements. These bonds shall be issued pursuant to an ordinance adopted by the legislative body specifying the principal amount of bonds to be issued, the purpose or purposes for which the bonds are to be issued, and provisions with respect to the bonds.

(b) If determined to be in the interest of the municipality or county, a portion of the bonds may be used to finance a project, and expenses in connection with the issuance of the bonds and a major portion of the

proceeds may be invested in consideration of a contract for the full term of the bonds or a shorter period at a rate or rates at least sufficient to provide for, alone or with other revenues that may be pledged, debt service for the bonds.

History. Acts 1985, No. 974, § 3; A.S.A. 1947, § 13-1263; Acts 1987, No. 58, § 2.

## 14-164-406. Bonds — Terms and conditions.

(a) As the ordinance or trust indenture which is authorized in this subchapter may provide, the bonds may:

(1) Be in registered or other form;

(2) Be in such denominations:

(3) Be exchangeable for bonds of another denomination;

(4) Be made payable at such places within or without the state;

(5) Be issued in one (1) or more series:

- (6) Bear such date or dates;
- (7) Mature at such time or times:
- (8) Be payable in such medium of payment:

(9) Be subject to such terms of redemption; and

- (10) Contain such other terms, covenants, and conditions, including, without limitation, those pertaining to:
  - (A) The custody and application of the proceeds of the bonds;
  - (B) The collection and disposition of project revenues; (C) The maintenance of various funds and reserves;
  - (D) The nature and extent of the pledge and security;

(E) The remedies on default:

(F) The rights, duties, and obligations of the legislative body of the issuer and the trustee, if any, for the owners of the bonds, and the rights of the owners of the bonds.

(b) All bonds issued under the provisions of this subchapter shall be and are declared to be negotiable instruments within the meaning of the negotiable instruments law of the state.

History. Acts 1985, No. 974, §§ 3, 7; A.S.A. 1947, §§ 13-1263, 13-1267.

## 14-164-407. Bonds — Trust indenture.

(a) The ordinance authorizing the bonds may provide for the execution by the chief executive officer of the issuer of a trust indenture which defines the rights of the owners of the bonds and provides for the appointment of a trustee for the owners of the bonds.

(b) The trust indenture may provide for the priority between and among successive issues and may contain any of the provisions set forth in § 14-164-406 and any other terms, covenants, and conditions that

are deemed desirable.

**History.** Acts 1985, No. 974, § 3; A.S.A. 1947, § 13-1263.

### 14-164-408. Bonds — Contents.

It shall be plainly stated on the face of each bond that the bond has been issued under the provisions of this subchapter and that it does not constitute an indebtedness of the issuer within any constitutional or statutory limitation.

**History.** Acts 1985, No. 974, § 3; A.S.A. 1947, § 13-1263.

### 14-164-409. Bonds — Sale.

The bonds may be sold at public or private sale for such price, including, without limitation, sale at a discount, and in such manner as the legislative body of the issuer may determine.

**History.** Acts 1985, No. 974, § 3; A.S.A. 1947, § 13-1263.

### 14-164-410. Bonds — Execution.

The bonds shall be executed in the manner provided by the Registered Public Obligations Act of Arkansas, § 19-9-401 et seq., as that act may be amended.

**History.** Acts 1985, No. 974, § 3; A.S.A. 1947, § 13-1263.

## 14-164-411. Bonds — Payment — Security.

(a) The principal of and interest on the revenue bonds issued pursuant to this section and § 14-164-402 shall be secured by a pledge of, and shall be payable from, revenues, as defined in § 14-164-402.

(b) Notwithstanding any provision of Arkansas law including, but not limited, § 14-200-101, et seq., in any municipality or county in which revenues have been pledged to secure the payment of revenue bonds as authorized by this subchapter, the portion of the revenues pledged to retire the revenue bonds shall not, except as permitted by the ordinance, order or trust indenture pursuant to which such revenue bonds are issued and secured, be repealed, abolished, or reduced so long as such revenue bonds, and any bonds issued to refund such revenue bonds, are outstanding.

**History.** Acts 1985, No. 974, § 3; A.S.A. 1947, § 13-1263; Acts 1987, No. 58, § 2; 1997, No. 1130, § 2.

A.C.R.C. Notes. The 1997 amendment to this section contains grammatical or stylistic errors. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the language.

The punctuation in the 1997 amendment to this section is incorrect or does not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision

Commission is unable to correct the punctuation.

Amendments. The 1997 amendment added (b); and rewrote (a).

# 14-164-412. Bonds - Mortgage lien.

(a) The ordinance or trust indenture authorized in §§ 14-164-405 or 14-164-407 may, but need not, impose a foreclosureable mortgage lien upon the capital improvements financed or refinanced, in whole or in part, with the proceeds of bonds issued under this subchapter.

(b) The nature and extent of the mortgage lien may be controlled by the ordinance or trust indenture including, without limitation, provi-

sions pertaining to:

(1) The release of all or part of the land, buildings, or facilities from the mortgage lien;

(2) The priority of the mortgage lien in the event of successive bond

issues; and

- (3) Authorizing any owner of bonds, or a trustee on behalf of all owners, either at law or in equity, to enforce the mortgage lien and, by proper suit, compel the performance of the duties of the officials of the issuer set forth in this subchapter or in the ordinance or trust indenture authorizing or securing the bonds.
- (c) References in this section to mortgage lien shall include a security interest in any personal property constituting the capital improvements, or part thereof, financed or refinanced, in whole or in part, with the proceeds of bonds issued under this subchapter.

**History.** Acts 1985, No. 974, § 5; A.S.A. 1947, § 13-1265.

# 14-164-413. Bonds — Special obligations.

The bonds issued under this subchapter shall not be general obligations of the issuer, but shall be special obligations, and in no event shall the bonds constitute an indebtedness of the issuer within the meaning of any constitutional or statutory limitation.

**History.** Acts 1985, No. 974, § 3; A.S.A. 1947, § 13-1263.

# 14-164-414. Bonds — Liability of legislative body's officers, employees, or members.

No officer, employee, or member of the legislative body of the issuer shall be personally liable on any bonds issued under the provisions of this subchapter or for any damages sustained by any person in connection with any contracts entered into to carry out the purposes and intent of this subchapter unless the person has acted with a corrupt intent.

**History.** Acts 1985, No. 974, § 8; A.S.A. 1947, § 13-1268.

#### 14-164-415. Bonds — Successive issues.

There may be successive bond issues for the purpose of financing the same capital improvements.

**History.** Acts 1985, No. 974, § 3; A.S.A. 1947, § 13-1263.

# 14-164-416. Bonds — Tax exemption.

Bonds issued under the provisions of this subchapter and the income thereon shall be exempt from all state, county, and municipal taxes, including, without limitation, all income, property, and inheritance taxes.

**History.** Acts 1985, No. 974, § 6; A.S.A. 1947, § 13-1266.

# 14-164-417. Alternative financing.

Nothing contained in this subchapter shall be deemed to be a restriction or limitation upon alternative means of financing previously available or hereafter made available to municipalities or counties for the purposes set forth in this subchapter.

**History.** Acts 1985, No. 974, § 10; A.S.A. 1947, § 13-1269.

# 14-164-418. Refunding bonds.

(a) Bonds may be issued under this subchapter to refund any outstanding bonds issued pursuant to this subchapter or to refund any outstanding bonds issued pursuant to any other law for the purpose of financing capital improvements.

(b)(1) The refunding bonds may be either sold for cash or delivered in

exchange for the outstanding obligations.

(2) If sold for cash, the proceeds may be either applied to the payment of the obligations refunded or deposited in irrevocable trust for the retirement thereof either at maturity or on an authorized redemption date.

(c) Refunding bonds shall in all respects be authorized, issued, and

secured in the manner provided in this subchapter.

(d) The ordinance under which the refunding bonds are issued may provide that any refunding bonds shall have the same priority of lien on revenues as originally pledged for payment of the obligation refunded thereby.

**History.** Acts 1985, No. 974, § 4; A.S.A. 1947, § 13-1264; Acts 1987, No. 58, § 3.

#### SUBCHAPTER 5 — ECONOMIC AND INDUSTRIAL DEVELOPMENT REVENUE BOND Law

SECTION.	SECTION.
14-164-501. Title.	14-164-514. Bonds, coupons — Execu-
14-164-502. Legislative findings and de-	tion.
terminations.	14-164-515. Bonds — Successive issues.
14-164-503. Purpose and supplemental intent.	14-164-516. Bonds — Priority among issues.
14-164-504. Definitions.	14-164-517. Bonds — Conversion.
14-164-505. Construction — Subchapter	14-164-518. Bonds — Payment.
controlling.	14-164-519. Bonds — Surplus revenues.
14-164-506. Authority to obtain and de-	14-164-520. Bonds — Mortgage lien.
velop industry.	14-164-521. Bonds — Default — Re-
14-164-507. Bonds — Authorization to is-	ceiver.
sue — Amount. 14-164-508. Bonds — Authorizing ordi-	14-164-522. Bonds — Special obligations.
nance or order generally.	14-164-523. Bonds — Tax exemption.
14-164-509. Bonds — Authorizing ordi-	14-164-524. Interim financing.
nance or order — Adop-	14-164-525. Refunding bonds.
tion.	14-164-526. Investment in bonds autho-
14-164-510. Bonds — Terms and condi-	rized.
tions.	14-164-527. Bonds authorized under
14-164-511. Bonds — Trust indenture.	other laws.
14-164-512. Bonds — Contents.	14-164-528. Municipality not authorized
14-164-513. Bonds — Sale.	to acquire utility.

Effective Dates. Acts 1985, No. 1017, § 18: Apr. 17, 1985. Emergency clause provided: "It is hereby found and declared that serious economic distress now exists in Arkansas, in part due to the need for certainty in the issuance of industrial development revenue bonds and this economic distress has been manifest in the increasing hesitancy to invest capital in industry in Arkansas, an unemployment rate in the State of Arkansas which exceeds the unemployment rate for the United States, and in increasing number of business failures and there is an immediate need for the General Assembly to establish another program for industrial

development and to take the actions set forth in this Act so that the industrial development program of the State and her counties and municipalities can proceed, all of which is necessary for the achievement of the public benefits flowing from the retention or expansion of existing employment and the obtaining of additional employment and payrolls. The immediate effectiveness of this Act is necessary. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in force and effect upon its passage and approval."

# 14-164-501. Title.

This subchapter shall be referred to and may be cited as the "Economic and Industrial Development Revenue Bond Law of 1985."

History. Acts 1985, No. 1017, § 17; A.S.A. 1947, § 13-1271.

# 14-164-502. Legislative findings and determinations.

It is found and declared by the General Assembly of the State of Arkansas that:

(1)(A) This state's program for industrial and economic development

and the financing thereof is inadequate; and

- (B) As a result, there are inadequate opportunities for employment of its inhabitants in industry and industry is not able to adequately replace, retool, or modernize with new technology, existing facilities; and
- (2) The securing and developing of industry upon terms and under conditions competitive with those available in other states is essential to the economic growth and development of this state; and

(3) The economic and other benefits to the state and its people resulting from economic development are essential to the public health,

safety, and welfare of the people of Arkansas; and

(4) Preserving and maintaining economic activity and the securing and developing of industry are essential public purposes serving to benefit the people of Arkansas; and

(5) The issuance of bonds and other evidences of indebtedness under the provisions of this subchapter will promote the economic welfare of this state and its people and is for a public purpose.

**History.** Acts 1985, No. 1017, § 1; A.S.A. 1947, § 13-1272.

# 14-164-503. Purpose and supplemental intent.

(a) This subchapter is enacted by the General Assembly in the exercise of its inherent powers under Arkansas Constitution, Amendment 7, § 1 and not under any other express constitutional provision.

(b) This subchapter is intended to supplement all other law which is designed to secure and develop industry and, when applicable in accordance with the provisions of this subchapter, may be used by any municipality or county as an alternative notwithstanding any constitutional provision or any other act authorizing a municipality or county, or any commission or agency thereof, to issue bonds for the purpose of securing and developing industry.

**History.** Acts 1985, No. 1017, § 14; A.S.A. 1947, § 13-1285.

#### 14-164-504. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "County" means a county of this state, or where a county is divided into two (2) districts the term "county" shall mean the entire county or either district of the county, in order that either district of a county so divided may issue revenue bonds and do all other acts in the manner and for the purposes authorized in this subchapter;

(2) "Governing body" means the council, board of directors, or city commission of any municipality;

(3) "Municipality" means a city of the first or second class or an

incorporated town;

- (4) "Equip" means to install or place on or in any building or structure equipment of any and every kind, whether or not affixed, including, without limiting the generality of the foregoing, building service equipment, fixtures, heating equipment, air conditioning equipment, machinery, furniture, furnishings, and personal property of every kind;
- (5) "Sell" means to sell for such price, in such manner, and upon such terms as the municipality or county shall determine, including, without limiting the generality of the foregoing, private or public sale, and if public pursuant to such advertisement as the municipality or county shall determine, sell for cash or credit payable in lump sum or in installments over such period as the municipality or county shall determine, and if on credit with or without interest and at such rate or rates as the municipality or county shall determine;

(6) "Lease" means to lease for such rentals, for such period or periods, and upon such terms and conditions as the municipality or county shall determine, including, without limiting the generality of the foregoing, the granting of such renewal or extension options for such rentals, for such period or periods, and upon such terms and conditions as the municipality or county shall determine and the granting of such purchase options for such prices and upon such terms and conditions as

the municipality or county shall determine;

(7) "Facilities" or "industrial facilities" means land, interests in land, buildings, facilities, equipment, or related improvements necessary or useful for the securing, developing, preserving, or maintaining of economic activity within or near the municipality or county, including, but not limited to, manufacturing facilities; warehouse and storage facilities; distribution facilities; repair and maintenance facilities; communications facilities; facilities for computer and data processing equipment and related services; agricultural storage, processing, packaging, shipping, and other agricultural facilities; transportation facilities; corporate and management offices for industry; sewage collection systems and treatment plants; and industrial parks;

(8) "Construct" means to acquire or build, in whole or in part, in such manner and by such method, including contracting therefor, and if the latter, by negotiation or bidding upon such terms and pursuant to such advertising as the municipality or county shall determine to be in the public interest and necessary, under the circumstances existing at the time, to accomplish the purposes of and authorities set forth in this

subchapter;

(9) "Surplus revenues" means revenues remaining after adequate provision shall have been made for expenses of operation, maintenance, and depreciation and all requirements of ordinances, orders, or indentures securing bonds, theretofore, or thereafter issued to finance the

cost of acquiring, constructing, reconstructing, extending, or improving the lands, buildings, or facilities for developing and securing industry

have been fully met and complied with;

(10) "Mortgage lien" means and includes security interest in any personal property embodied in the facilities acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of bonds issued under this subchapter.

**History.** Acts 1985, No. 1017, §§ 6, 8, 12; A.S.A. 1947, §§ 13-1273, 13-1278, 13-1280.

# 14-164-505. Construction — Subchapter controlling.

(a) This subchapter shall be liberally construed to accomplish its

purposes.

(b)(1) This subchapter shall constitute the sole authority for the accomplishment of the purposes of this subchapter, separate and independent of any other act or constitutional provision pertaining to such purposes.

(2) Furthermore, it shall not be necessary to comply with general provisions of other laws dealing with public facilities, their acquisition,

construction, leasing, encumbering, or disposition.

**History.** Acts 1985, No. 1017, § 14; A.S.A. 1947, § 13-1285.

# 14-164-506. Authority to obtain and develop industry.

Any municipality and any county is authorized to own, acquire, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, contract concerning, or otherwise deal in or dispose of industrial facilities of any and every nature whatever that can be used in securing or developing industry within or near the municipality or county.

**History.** Acts 1985, No. 1017, § 2; A.S.A. 1947, § 13-1274.

# 14-164-507. Bonds — Authorization to issue — Amount.

Municipalities and counties are authorized to use any available revenues for the accomplishment of the purposes set forth in § 14-164-506, and are authorized to issue revenue bonds and to use the proceeds thereof for the accomplishment of the purposes set forth in § 14-164-506, either alone or together with other available funds and revenues. The bonds may be issued in an amount sufficient to pay all costs of accomplishing the specified purposes; all costs of issuing the bonds; the amount necessary for a reserve, if desirable; the amount necessary to provide for debt service on the bonds until revenues for the payment thereof are available; and any other costs of whatever nature necessarily incidental to the accomplishment of the specified purposes. In

addition, revenue bonds are authorized for the purpose of refunding bonds as provided in § 14-164-525.

**History.** Acts 1985, No. 1017, § 3; A.S.A. 1947, § 13-1275.

# 14-164-508. Bonds — Authorizing ordinance or order generally.

In the ordinance of the municipality or the order of the county court authorizing the issuance of revenue bonds, the municipality or the county may provide for the initial issuance of one (1) or more bonds aggregating the principal amount of the entire issue and may, in the ordinance or order, make such provisions for installment payments of the principal amount of such bonds as it may consider desirable and may provide for such bonds to be payable to bearer with interest coupons, or to be registrable as to principal only with interest coupons, or to be registrable as to principal and interest, and where interest accruing thereon is not represented by interest coupons, for the indorsement of payment of interest on such bonds.

**History.** Acts 1985, No. 1017, § 5; A.S.A. 1947, § 13-1277.

# 14-164-509. Bonds — Authorizing ordinance or order — Adoption.

(a)(1)(A) Revenue bonds authorized in this subchapter may be issued by a municipality upon the adoption of an ordinance therefor by the governing body of the municipality.

(B) Revenue bonds authorized in this subchapter may be issued by a county upon the entry of an order of the county court of the county.

(2) The ordinance or order shall state the purpose for which the revenue bonds are to be issued, and the total amount of the issue.

(b)(1) No such ordinance or order shall be adopted or entered until after a public hearing is held before the governing body of the municipality or the county court of the county.

(2) The hearing may be adjourned from time to time.

(c)(1) At least ten (10) days prior to the date of the hearing, notice thereof shall be filed with the Director of the Arkansas Economic Development Commission and the State Securities Commissioner and shall be published one (1) time in a newspaper of general circulation in the municipality or county.

(2) The notice provided for in this subsection shall be published and filed by the clerk or recorder of the municipality or by the county clerk

of the county.

(3) It shall not be necessary that the action be taken by the governing body or county court directing publication and filing of the notice, and the clerk or recorder, or county clerk, as the case may be, shall publish and file notice when requested to do so by the mayor or any member of the governing body in the case of a municipality or by the county judge in the case of a county.

(d) After the hearing, the ordinance or order, as introduced or as modified or amended, may be adopted or entered.

**History.** Acts 1985, No. 1017, § 4; A.S.A. 1947, § 13-1276; Acts 1997, No. 540, § 17.

Amendments. The 1997 amendment

substituted "Arkansas Economic Development Commission" for "Arkansas Industrial Development Commission" in (c)(1).

#### 14-164-510. Bonds — Terms and conditions.

(a) As the ordinance may provide, the bonds issued under the authority of this subchapter may:

(1) Be in bearer or registered form, with or without coupons, and may be subject to exchange or modification in that regard;

(2) Be issued in one (1) or more series;

(3) Bear such date or dates;

(4) Mature at such time or times;

(5) Bear interest at such rate or rates;

(6) Be in such form;

(7) Be executed in such manner;

(8) Be payable in such medium of payment and at such place or places;

(9) Be subject to such terms of redemption; and

(10) Contain such terms, covenants, and conditions as the ordinance may provide, including, without limitation, those pertaining to:

(A) The custody and application of proceeds of the bonds;

(B) The collection and disposition of revenues;

(C) The maintenance of various funds and reserves;

(D) The nature and extent of the security;

(E) The rights, duties, and obligations of the municipality or county and the trustee for the holders or registered owners of the bonds; and

(F) The rights of the holders or registered owners of the bonds.

(b) The bonds shall have all the qualities of negotiable instruments under the negotiable instruments laws of this state.

**History.** Acts 1985, No. 1017, § 5; A.S.A. 1947, § 13-1277.

# 14-164-511. Bonds — Trust indenture.

- (a) The ordinance or order may provide for the execution by the municipality or county of an indenture which defines the rights of the bondholders and provides for the appointment of a trustee for the bondholders.
- (b) The indenture may control the priority between successive issues and may contain any other items, covenants, and conditions that are deemed desirable, including, without limitation, those pertaining to:

(1) The custody and application of the proceeds of the bonds;

(2) The collection and disposition of revenues;

(3) The maintenance of various funds and reserves;

(4) The nature and extent of the security;

(5) The rights, duties, and obligations of the municipality or county and the trustee for the holders or registered owners of the bonds; and

(6) The rights of the holders or registered owners of the bonds.

(c) It shall not be necessary for the municipality or county to publish any indenture, lease, or any other agreement if:

(1) The ordinance authorizing an indenture, the ordinance authoriz-

ing a lease, or the ordinance authorizing any other agreement:

(A) Is published as required by the law governing the publication

of ordinances of a municipality; and

(B) Advises that a copy of the indenture, lease, or other agreement, as the case may be, is on file in the office of the clerk or recorder of the municipality for inspection by an interested person; and

(2) The copy of the indenture, lease, or other agreement, as the case may be, is filed with the clerk or recorder of the municipality or county

clerk.

**History.** Acts 1985, No. 1017, § 5; A.S.A. 1947, § 13-1277.

#### 14-164-512. Bonds — Contents.

It shall be plainly stated on the face of each bond that the bond has been issued under the provisions of this subchapter, and that it does not constitute an indebtedness of the municipality or county within any constitutional or statutory limitation.

**History.** Acts 1985, No. 1017, § 6; A.S.A. 1947, § 13-1278.

#### 14-164-513. Bonds — Sale.

The bonds may be sold for such price, including, without limitation, sale at a discount, and in such manner as the municipality or county may determine by ordinance or order.

**History.** Acts 1985, No. 1017, § 5; A.S.A. 1947, § 13-1277.

# 14-164-514. Bonds, coupons — Execution.

(a)(1) The bonds shall be executed by the mayor and the city clerk or recorder of the municipality, or by the county judge and the county clerk of the county, as the case may be.

(2) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds or coupons, such signatures shall nevertheless be valid and sufficient for all purposes.

(b) The bonds shall be executed in the manner provided by the Registered Public Obligations Act of Arkansas, § 19-9-401 et seq., as

that act may be amended.

(c) The coupons attached to the bonds may be executed by the facsimile signature of the mayor or county judge.

**History.** Acts 1985, No. 1017, § 5; A.S.A. 1947, § 13-1277.

#### 14-164-515. Bonds — Successive issues.

There may be successive bond issues for the purpose of financing the same industrial facilities, involving one (1) or more industries, and there may be successive bond issues for financing the cost of reconstructing, replacing, constructing additions to, extending, improving, and equipping industrial facilities already in existence, whether or not originally financed by bonds issued under this subchapter, with each successive issue to be authorized as provided by this subchapter.

**History.** Acts 1985, No. 1017, § 5; A.S.A. 1947, § 13-1277.

# 14-164-516. Bonds — Priority among issues.

Priority between and among issues and successive issues as to security of the pledge of revenues and mortgage liens on the land, buildings, and facilities involved may be controlled by the ordinance or order authorizing the issuance of bonds under this subchapter.

**History.** Acts 1985, No. 1017, § 5; A.S.A. 1947, § 13-1277.

# 14-164-517. Bonds — Conversion.

The municipality or the county may make provision in the ordinance or order for the manner and circumstances in which and under which bonds issued under § 14-164-508 may, in the future at the request of the holders or registered owners thereof, be converted into bonds of smaller denomination, which bonds of smaller denomination may in turn be either coupon bonds payable to bearer or bonds registrable as to principal only, or bonds registrable as to both principal and interest.

**History.** Acts 1985, No. 1017, § 5; A.S.A. 1947, § 13-1277.

# 14-164-518. Bonds — Payment.

The principal of and interest on the revenue bonds, and paying agent's fees, shall be payable in the first instance from gross revenues derived from the lands, buildings, or facilities acquired, constructed, reconstructed, extended, or improved, in whole or in part, with the proceeds of the bonds.

**History.** Acts 1985, No. 1017, § 6; A.S.A. 1947, § 13-1278.

# 14-164-519. Bonds — Surplus revenues.

The municipality or county is authorized to pledge to and use for the payment of the principal of and interest on the bonds, and paying agent's fees, surplus revenues derived from other lands, buildings, or facilities used and useful for securing and developing industry.

History. Acts 1985, No. 1017, § 6; A.S.A. 1947, § 13-1278.

# 14-164-520. Bonds — Mortgage lien.

(a) The ordinance, order, or indenture referred to in §§ 14-164-508, 14-164-509, and 14-164-511 may, but need not, impose a foreclosable mortgage lien upon the facilities acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds

of bonds issued under this subchapter.

- (b) The nature and extent of the mortgage lien may be controlled by the ordinance, order, or indenture including, without limitation, provisions pertaining to the release of all or part of the land, buildings, or other facilities from the mortgage lien and the priority of the mortgage lien in the event of successive bond issues as authorized by § 14-164-515.
- (c) The ordinance, order, or indenture authorizing or securing the bonds may authorize any holder or registered owner of bonds issued under the provisions of this subchapter, or a trustee on behalf of all holders and registered owners, either at law or in equity, to enforce the mortgage lien and, by proper suit, compel the performance of the duties of the officials of the issuing municipality or county set forth in this subchapter and set forth in the ordinance, order, or indenture authorizing or securing the bonds.

History. Acts 1985, No. 1017, § 8; A.S.A. 1947, § 13-1280.

# 14-164-521. Bonds — Default — Receiver.

(a) In the event of a default in the payment of the principal of or interest on any revenue bonds issued under this subchapter, any court having jurisdiction may appoint a receiver to take charge of the land, buildings, or facilities acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of revenue bonds issued under this subchapter, upon which land, buildings, or facilities, or any part thereof, there is a mortgage lien securing the revenue bonds with reference to which there is such a default in the payment of principal or interest.

(b) The receiver shall have the power to operate and maintain the land, buildings, or facilities and to charge and collect rates or rents sufficient to provide for the payment of the principal of and interest on the bonds, after providing for the payment of any cost of receivership and operating expenses of the land, buildings, or facilities, and to apply

the income and revenues derived from the land, buildings, or facilities in conformity with this subchapter and the ordinance, order, or indenture authorizing or securing the bonds.

(c) When the default has been cured, the receivership shall be ended

and the properties returned to the municipality or county.

(d) The relief afforded by this section shall be construed to be in addition and supplemental to the remedies that may be afforded the trustee for the bondholders and the bondholders in the ordinance, order, or indenture authorizing or securing the bonds, and shall be so granted and administered as to accord full recognition to priority rights of bondholders as to the pledge of revenues from, and mortgage lien on, the land, buildings, or facilities as specified in and fixed by the ordinances, orders, or indentures authorizing or securing successive bond issues.

**History.** Acts 1985, No. 1017, § 9; A.S.A. 1947, § 13-1281.

# 14-164-522. Bonds — Special obligations.

The bonds issued under the authority of this subchapter shall not be general obligations of the municipality or county, but shall be special obligations, and in no event shall the revenue bonds constitute an indebtedness of the municipality or county within the meaning of any constitutional or statutory limitation.

**History.** Acts 1985, No. 1017, § 6; A.S.A. 1947, § 13-1278.

# 14-164-523. Bonds — Tax exemption.

Bonds issued under the provisions of this subchapter shall be exempt from all state, county, and municipal taxes, including, without limitation, income and inheritance taxes.

**History.** Acts 1985, No. 1017, § 10; A.S.A. 1947, § 13-1282.

# 14-164-524. Interim financing.

- (a) If the issuance of bonds is authorized in accordance with the provisions of this subchapter, a municipality or county is authorized to obtain interim financing pending the delivery of all or any part of the bonds from such sources and upon such terms as the municipality or the county shall determine.
- (b) As evidence of any indebtedness so incurred, the municipality or the county may execute and deliver its promissory note or notes and pledge to the payment thereof any revenues authorized by this subchapter to be pledged to revenue bonds and may secure the notes as revenue bonds issued under this subchapter may be secured.

(c) The notes shall not be general obligations of the municipality or county but shall be special obligations, and in no event shall such notes constitute an indebtedness of the municipality or county within the

meaning of any constitutional or statutory limitation.

(d) The municipality or county may use, as distinguished from pledge, any available revenues to pay or to apply to the payment of the principal of and interest on the notes and may use the proceeds of revenue bonds, either alone or with other available revenues, to pay the

principal and interest on the notes.

(e) The notes may bear such date or dates, may mature at such time or times, not exceeding thirty-six (36) months from their respective dates, may bear interest at such rate or rates, may be in such form, may be executed in such manner, may be payable at such place or places, may contain such provisions for prepayment prior to maturity and may contain such other terms, or covenants, and conditions as the ordinance or order may provide, not inconsistent with the provisions of this subchapter pertaining to revenue bonds and pertaining to the security, rights, duties, and obligations of the municipality or county and the trustee for the holders or registered owners of the bonds and the rights of the holders or registered owners of the bonds.

**History.** Acts 1985, No. 1017, § 5; A.S.A. 1947, § 13-1277.

# 14-164-525. Refunding bonds.

(a) Revenue bonds may be issued under this subchapter for the purpose of refunding any obligations issued under this subchapter or similar acts.

(b) The refunding bonds may be combined with bonds issued under

the provisions of § 14-164-507 into a single issue.

(c) When bonds are issued under this section for refunding purposes, such bonds may either be sold or delivered in exchange for the outstanding obligations.

(d) If sold, the proceeds may be either applied to the payment of the obligations refunded or deposited in escrow for the retirement thereof.

(e) The ordinance or order under which the refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the obligations refunded thereby.

(f) The refunding bonds shall be issued and secured in the manner provided for other bonds issued under this subchapter and shall have

all the attributes of such bonds.

**History.** Acts 1985, No. 1017, § 7; A.S.A. 1947, § 13-1279.

#### 14-164-526. Investment in bonds authorized.

Any municipality or county, or any board, commission, or other authority thereof, or the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any such municipality or any county, or the board of trustees of any retirement system created by the General Assembly may, in its discretion, invest any of its funds in the revenue bonds issued under the provisions of this subchapter, and revenue bonds issued under this subchapter shall be eligible to secure the deposit of public funds.

**History.** Acts 1985, No. 1017, § 11; A.S.A. 1947, § 13-1283.

#### 14-164-527. Bonds authorized under other laws.

The provisions of this subchapter shall not restrict the issuance, pursuant to the authority of other laws, of any bonds with regard to which a resolution, ordinance, order, or similar action authorizing or committing to the issuance of bonds has been adopted or taken by a municipality or county prior to or after April 17, 1985.

**History.** Acts 1985, No. 1017, § 15; A.S.A. 1947, § 13-1286.

# 14-164-528. Municipality not authorized to acquire utility.

Nothing in this subchapter shall be construed to authorize any municipality to issue or sell revenue bonds or use the proceeds thereof to purchase, condemn, or otherwise acquire a utility plant or distribution system owned or operated by a regulated public utility.

**History.** Acts 1985, No. 1017, § 13; A.S.A. 1947, § 13-1284.

#### Subchapter 6 — Compacts by Counties for Railroad Operations

SECTION.	SECTION.
14-164-601. Legislative intent.	14-164-604. Board of directors.
14-164-602. Definition.	14-164-605. Issuance of bonds.
14-164-603. Authority generally.	14-164-606. Limitations on rail service.

# 14-164-601. Legislative intent.

(a) The General Assembly recognizes that:

(1) The continued industrial growth and development of some counties in the state is seriously threatened by the discontinuation of the operation of a railroad in these counties;

(2) These counties should be given the specific authority to issue general obligation bonds or revenue bonds to acquire the railroad and to repair and operate the railroad in order to avoid the loss of existing industry and to attract new industrial development in the area; and

- (3) An adequate transportation system is essential to the industrial development of any area.
  - (b) The General Assembly therefore determines that:
- (1) A railroad is an industrial facility, or a facility useful in securing and developing industry, as contemplated by Arkansas Constitution, Amendment 49 [repealed] and §§ 14-164-201 14-164-206 and 14-164-208 14-164-224;
- (2) The acquisition of an existing railroad and the acquisition and operation or leasing out of it for operation is a proper industrial development project to be financed by the issuance of industrial development bonds under Arkansas Constitution, Amendment 49 and §§ 14-164-201 14-164-206 and 14-164-208 14-164-224; and
- (3) This subchapter is designed to give contiguous counties specific authority to jointly issue bonds to be used to lease or otherwise acquire, repair, maintain, and operate, or lease out for operation, an existing railroad in these counties.

**History.** Acts 1983, No. 322, § 6; A.S.A. 1947, § 13-1624.

A.C.R.C. Notes. It is questionable whether Ark. Const. Amend. 49 is re-

pealed in whole or whether only those provisions that conflict with Ark. Const. Amend. 62 are repealed by Ark. Const. Aend. 62.

#### 14-164-602. Definition.

As used in this subchapter, unless the context otherwise requires, "facilities" includes railroads and railroad locomotives, railroad cars, and other railroad equipment and facilities.

**History.** Acts 1983, No. 322, § 4; A.S.A. 1947, § 13-1622.

# 14-164-603. Authority generally.

- (a) Any two (2) or three (3) contiguous counties in the state are authorized to enter into a compact where the participating counties agree to issue bonds, jointly or individually, under the provisions of Arkansas Constitution, Amendment 49 [repealed] or under the provisions of §§ 14-164-201 14-164-206 and 14-164-208 14-164-224 and to use the proceeds of the bonds for the purpose of leasing or otherwise acquiring and repairing, maintaining, and operating, or leasing out for operation, an existing railroad within the participating counties.
  - (b)(1) Any such compact shall be evidenced by an ordinance of the

quorum court of each of the participating counties.

- (2) The ordinance shall identify and contain the terms of the compact, including the obligations of the particular county under the terms of the compact.
- (c) Any one (1) county in the State of Arkansas is authorized to provide rail service pursuant to this subchapter, and any such county ordinance shall be treated as a compact for purposes of this subchapter.

**History.** Acts 1983, No. 322, § 1; A.S.A. 1947, § 13-1619.

A.C.R.C. Notes. It is questionable whether Ark. Const. Amend. 49 is re-

pealed in whole or whether only those provisions that conflict with Ark. Const. Amend. 62 are repealed by Ark. Const. Amend. 62.

#### 14-164-604. Board of directors.

(a) A compact entered into pursuant to the authority granted in this subchapter may provide for the establishment of a compact board of directors, to be composed of such members as may be prescribed in the compact.

(b) The board shall have such authority with respect to the issuance of bonds and the payment of principal and interest on the bonds, together with any other expenses of issuing and selling the bonds, and, with respect to the supervision and administration of the lease or acquisition and the repair, maintenance, and operation or leasing out for operation of the railroad, as may be agreed upon by the participating counties.

**History.** Acts 1983, No. 322, § 2; A.S.A. 1947, § 13-1620.

#### 14-164-605. Issuance of bonds.

All bonds issued pursuant to a compact entered into under the provisions of this subchapter, whether issued under the authority of Arkansas Constitution, Amendment 49 [repealed] or the authority granted in §§ 14-164-201 — 14-164-206 and 14-164-208 — 14-164-224, shall be subject to all the conditions, restrictions, limitations, and other provisions relating to bonds issued for other purposes under the provisions of Arkansas Constitution, Amendment 49, and §§ 14-164-201 — 14-164-206 and 14-164-208 — 14-164-224.

**History.** Acts 1983, No. 322, § 3; A.S.A. 1947, § 13-1621.

A.C.R.C. Notes. It is questionable whether Ark. Const. Amend. 49 is re-

pealed in whole or whether only those provisions that conflict with Ark. Const. Amend. 62 are repealed by Ark. Const. Amend. 62.

# 14-164-606. Limitations on rail service.

(a) Any rail service provided pursuant to this subchapter shall be limited to short line intrastate rail service only, and any such rail service is expressly prohibited from connecting with the rail service provided by any other compact formed under this subchapter.

(b) The rail service provided for in this subchapter may connect only with an existing railroad line presently operating in the State of

Arkansas.

(c) This subchapter shall not be construed to prevent the extension of rail service to future industrial sites located within the geographical boundaries of counties which have a compact pursuant to this subchapter.

**History.** Acts 1983, No. 322, § 5; A.S.A. 1947, § 13-1623.

#### SUBCHAPTER 7 — EXEMPTIONS FROM AD VALOREM TAXATION

SECTION. 14-164-701. Legislative intent. 14-164-702. Applicability. SECTION. 14-164-703. Payments in lieu of taxes.

Effective Dates. Acts 1981, No. 497, § 6: Mar. 16, 1981. Emergency clause provided: "It is hereby found and declared that there is an immediate need for the General Assembly to make the findings and declarations, and to take the actions set forth in this Act so that the industrial development program of the State and her counties and municipalities can proceed, all of which is necessary for the achievement of the public benefits flowing from the retention or expansion of existing employment and the obtaining of additional employment and payrolls. The immediate effectiveness of this Act is necessary. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in force and effect upon its passage and approval."

Acts 1991, No. 713, § 5: Mar. 22, 1991. Emergency clause provided: "It has been found and it is hereby declared that present law provides for the allocation of payments in lieu of ad valorem taxes among affected political subdivisions and does not authorize affected political subdivisions to allocate such payments on a contractual basis and that some political subdivisions anticipate a need for such contractual allocations with respect to prospective industrial projects. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in force upon its passage and approval."

# 14-164-701. Legislative intent.

- (a) It is declared and confirmed that the securing and developing of industry is vital to the economic welfare of the State of Arkansas and its people. To this end, it is necessary that the maximum flexibility be given to the counties and municipalities in the state in their efforts to retain and expand existing, and locate new, industrial facilities. This task involves the opportunity for the full utilization of the benefits of financing industrial facilities under Arkansas Constitution, Amendment 49 [repealed], and §§ 14-164-201 14-164-206, 14-164-208 14-164-224, and 14-267-101 14-267-113, including the exemption from ad valorem taxation of all industrial facilities which were exempt under Arkansas Constitution, Article 16, § 5, as interpreted by the Supreme Court of Arkansas in Wayland v. Snapp, 232 Ark. 57, 334 S.W.2d 633 (1960).
- (b) While concerns using industrial bond financing should be encouraged to make payments in lieu of ad valorem taxes and that is declared to be the general policy of the General Assembly, the final determination of whether these payments are to be made and, if made, in what amounts should be negotiated and contracted by the counties or municipalities and by the industrial concerns involved.

**History.** Acts 1981, No. 497, § 1; A.S.A. 1947, § 13-1616.

A.C.R.C. Notes. It is questionable whether Ark. Const. Amend. 49 is re-

pealed in whole or whether only those provisions that conflict with Ark. Const. Amend. 62 are repealed by Ark. Const. Amend. 62.

# 14-164-702. Applicability.

- (a) Pursuant to the findings and declarations of the state in § 14-164-701, it is found and declared that not only are the industrial facilities themselves, as such facilities are defined in §§ 14-164-201 14-164-206, 14-164-208 14-164-224, and 14-267-101 14-267-113, to be exempt from ad valorem taxation, but the interest of a lessee or of a purchaser under a contract of sale of industrial facilities which are so exempt shall also be exempt from ad valorem taxation. To this end, the interest of a lessee or of a purchaser is found and declared to be, and shall be considered for all purposes of ad valorem taxation, intangible personal property. This finding and declaration is made pursuant to the authority granted to the General Assembly by, and in implementation of the provisions and purposes of, Arkansas Constitution, Amendment 57.
- (b) The findings and declarations made in § 14-164-701 and the policy declared in this section shall be applicable to all existing industrial facilities and to all future industrial facilities involved in Arkansas Constitution, Amendment 49 [repealed], §§ 14-164-201 14-164-206, 14-164-208 14-164-224, and 14-267-101 14-267-113 financings, and to all existing and future interests in leases or purchase contracts pertaining to these industrial facilities.

**History.** Acts 1981, No. 497, § 2; A.S.A. 1947, § 13-1617.

A.C.R.C. Notes. It is questionable whether Ark. Const. Amend. 49 is repealed in whole or whether only those provisions that conflict with Ark. Const. Amend. 62 are repealed by Ark. Const. Amend. 62.

Cross References. Industrial development bonds exempt from taxes, § 14-164-222

Pollution control facilities, tax exemption of bonds, § 14-267-112.

# 14-164-703. Payments in lieu of taxes.

(a) In the event that a county or municipality and a lessee under a lease, or a purchaser under a contract of sale, enter into an agreement for payments in lieu of ad valorem taxes, each agreement shall provide, or, by virtue of this subchapter, shall be interpreted as providing, that all in-lieu-of-taxes payments shall be distributed to the political subdivisions which would have received ad valorem tax payments on the industrial facilities if the interest involved had not been exempt from ad valorem taxes in the proportions that the millage levied by each affected political subdivision bears to the millage levied by all affected political subdivisions, unless all such political subdivisions, including the affected school district or districts, shall otherwise agree.

(b) Nothing in this section shall be construed as affecting in any manner the rights or obligations of any of the parties to any such

agreements existing on the date of enactment of this subchapter providing for payments in lieu of ad valorem taxes.

**History.** Acts 1981, No. 497, § 3; A.S.A. 1947, § 13-1618; Acts 1991, No. 713, § 1.

Publisher's Notes. In reference to the term "the date of enactment of this sub-

chapter," Acts 1981, No. 497 was signed by the Governor and became effective on March 16, 1981.

# CHAPTER 165 INDUSTRIAL DEVELOPMENT COMPACTS

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]

2. Inter-Municipal, Inter-County, and Municipal-County Compacts.

#### SUBCHAPTER 1 — GENERAL PROVISIONS

#### [Reserved]

# Subchapter 2 — Inter-Municipal, Inter-County, and Municipal-County Compacts

SECTION.

14-165-201. Construction.

14-165-202. Authority generally.

14-165-203. Establishment, authority,

SECTION.

etc., of commission.

14-165-204. Issuance of bonds.

Preambles. Acts 1960 (Ex. Sess.), No. 2 contained a preamble which read: "Whereas the people of the State of Arkansas expressed themselves in favor of a more effective program of industrial development by their passage of Amendment No. 49 [repealed] to the Constitution of the State of Arkansas; and

"Whereas joint efforts on the part of municipalities, counties or municipalities and counties would greatly facilitate the industrial development of the State of

Arkansas; and

"Whereas, it is advisable to implement the provisions of Amendment No. 49 [repealed] to the Constitution in order to provide for such joint efforts and thereby more effectively accomplish the objects of said Amendment; Now Therefore..."

Effective Dates. Acts 1960 (Ex. Sess.), No. 2, § 6: approved Jan. 21, 1960. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that the State of Arkansas does

not have an adequate program for the industrial development of the State and the financing thereof; that on account of such inadequate program the State of Arkansas has been unable to provide for its inhabitants maximum opportunities in industry; that on account thereof the State of Arkansas and municipalities and counties therein have lost certain industries that might otherwise have been obtained; that unless an adequate program for the industrial development of the State is immediately undertaken the State of Arkansas will suffer immediate and irreparable further loss in opportunities for industrial expansion and job opportunities for its inhabitants; and that only by giving immediate effect to this act can such conditions be alleviated. An emergency, therefore, is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage."

#### RESEARCH REFERENCES

ALR. Eminent domain: industrial park or similar development as public use justifying condemnation of private property. 62 ALR 4th 1183.

#### CASE NOTES

Analysis

Constitutionality. Compact.

Constitutionality.

This subchapter is not in conflict with Ark. Const., Art. 7, § 28, Ark. Const., Art. 16, §§ 5 and 6 or former Ark. Const. Amend. 49 (repealed by Ark. Const. Amend. 62, § 11. Hackler v. Baker, 233 Ark. 690, 346 S.W.2d 677 (1961).

#### Compact.

The word "compact" as used in this subchapter refers to no single written agreement or contract, but generally to the undertaking to proceed jointly in an effort to secure industries. Hackler v. Baker, 233 Ark. 690, 346 S.W.2d 677

#### 14-165-201. Construction.

This chapter is intended to supplement all existing constitutional provisions and legislation designed to secure and develop industry and shall be liberally construed to accomplish its purposes.

History. Acts 1960 (Ex. Sess.), No. 2, § 5; A.S.A. 1947, § 14-804.

# 14-165-202. Authority generally.

(a) Two (2) or more counties, or two (2) or more municipalities, whether or not in the same county, or one (1) or more counties and one (1) or more municipalities are authorized and empowered to join together in a compact for the purpose of engaging in joint efforts to secure and develop industry of mutual benefit to the parties to the compact and to finance it by each party to the compact issuing bonds under the provisions of Arkansas Constitution, Amendment 49 [repealed).

(b)(1) Counties entering into compacts to which one (1) or more other counties are parties must have a common border with at least one (1)

other county that is a party to the compact.

(2) Municipalities entering into compacts must be sufficiently near to the other parties to the compact to enable all parties to the compact to

benefit from the joint efforts undertaken.

(c) Any party to any compact authorized in this subchapter may issue revenue bonds under the provisions of the Municipalities and Counties Industrial Development Revenue Bond Law, §§ 14-164-201 — 14-164-206 and 14-164-208 — 14-164-224, in aid of any compact project.

A.C.R.C. Notes. It is questionable History. Acts 1960 (Ex. Sess.), No. 2, § 1; A.S.A. 1947, § 14-801. whether Ark. Const. Amend. 49 is repealed in whole or whether only those provisions that conflict with Ark. Const.

Amend. 62 are repealed by Ark. Const. Amned. 62.

#### **CASE NOTES**

ANALYSIS

Inter-county compacts. Provisions not mandatory.

**Inter-County Compacts.** 

Two counties, each having the right to issue bonds, have the right to form a compact to accomplish the same purpose for their mutual benefit, such as engaging in joint efforts to secure and develop industry of mutual benefit. Hackler v. Baker, 233 Ark. 690, 346 S.W.2d 677 (1961).

The words "for ... securing and developing industry ... within the county holding the election" in former Ark. Const. Amend. 49, § 1 (repealed by Ark. Const. Amend. 62, § 11, have been construed so that the amendment was not violated in letter or in spirit where the money expended in one county to build a factory in another county would have furnished employment to the citizens of both counties. Hackler v. Baker, 233 Ark. 690, 346 S.W.2d 677 (1961).

**Provisions Not Mandatory.** 

This section does not compel a city and county to form a compact, but merely authorizes them to do so if they desire. Wayland v. Snapp, 232 Ark. 57, 334 S.W.2d 633 (1960).

# 14-165-203. Establishment, authority, etc., of commission.

(a)(1) Any compact entered into under the terms of this subchapter shall provide for the establishment of an inter-municipal, inter-county, or municipal-county commission which shall hold title as trustee for the use and benefit of the parties to the compact as their interests may appear to any property acquired or constructed with the proceeds of the bonds issued by the parties.

(2)(A) The commission shall be made up of one (1) representative from each party to the compact, to be appointed by the mayor or county judge of the municipality or county which the appointee

represents.

(B) In the case of a compact having an even number of parties, the appointed representatives of the parties to the compact shall select an additional person, who is agreeable to all parties to the compact, to serve on the commission.

(3)(A) The members of the commission:

(i) Shall serve for terms of three (3) years' duration;

(ii) Shall be eligible for reappointment; and

(iii) May be removed only for cause by the mayor or county judge

of the municipality or county which they represent.

(B) In the event of a vacancy other than by expiration of term, the remaining members of the commission shall fill the vacancy by appointing a member to serve the unexpired portion of the term.

(b)(1)(A) Commissions created under the terms of this subchapter shall have the power to take all steps and to make and enter into all contracts and agreements necessary or incidental to the securing and developing of industry that is mutually beneficial to the parties to the compact.

(B)(i) However, any contract or agreement relating to the issuance of bonds shall be approved by the municipal governing body or county

court of each municipality or county which is a party to the compact before it shall be effective.

(ii) Any property acquired under the provisions of this subchapter shall not be sold unless and until the terms of the sale are approved by the municipal governing body or county court of each and every party to the compact.

(2) The commission may employ engineers, architects, inspectors, managers, attorneys, and such other employees as, in its judgment, may be necessary in the execution of its powers and duties and may fix

their compensation.

(3) After the construction or acquisition of any lands, buildings, or facilities and subject to the limitations contained in this chapter, the commission shall have the authority to reconstruct, extend, equip, improve, operate, maintain, sell, lease, contract concerning, or otherwise deal in or dispose of the lands, buildings, or facilities.

(c) All expenses and liabilities incurred in carrying out the duties and powers of the commission may be paid from any available funds, including, without limitation, funds obtained from the issuance of bonds or from revenues derived from facilities constructed or acquired with the proceeds of the bonds.

**History.** Acts 1960 (Ex. Sess.), No. 2, § 2; A.S.A. 1947, § 14-802.

#### 14-165-204. Issuance of bonds.

(a) Any compact entered into under the provisions of this subchapter may provide that each party to the compact will issue bonds under Arkansas Constitution, Amendment 49 [repealed], and that all funds obtained by the issuance of the bonds will be used for a joint industrial development project.

(b) Whenever the parties to the compact agree that each shall issue bonds under Arkansas Constitution, Amendment 49 [repealed], no bonds shall be issued by any party to the compact for use in the joint project unless the voters of each and every party to the compact approve

the issuance of bonds.

(c) The parties to the compact shall determine by agreement the portion of the total cost of any project that each party to the compact is to bear.

**History.** Acts 1960 (Ex. Sess.), No. 2, § 3; A.S.A. 1947, § 14-803.

A.C.R.C. Notes. It is questionable whether Ark. Const. Amned. 49 is re-

pealed in whole or whether only those provisions that conflict with Ark. Const. Amend. 62 are repealed by Ark. Const. Amend. 62.

#### CASE NOTES

ANALYSIS

In General.

With reference to the words "issue bonds," the legislature had in mind the issuance of bonds that were legal and

In general.

Jurisdiction.

binding on the taxpayer and not the mere preparation and printing of bonds. Hackler v. Baker, 233 Ark. 690, 346 S.W.2d 677 (1961).

#### Jurisdiction.

The county courts have jurisdiction of the proceeds of the bonds, and the proceeds will be economically spent when two counties form a compact to accomplish the same purpose for their mutual benefit. Hackler v. Baker, 233 Ark. 690, 346 S.W.2d 677 (1961).

#### **CHAPTER 166**

#### PLANNING AND DEVELOPMENT ORGANIZATIONS

#### SUBCHAPTER.

- 1. GENERAL PROVISIONS. [RESERVED.]
- 2. Multi-County Planning and Development Organizations.

#### SUBCHAPTER 1 — GENERAL PROVISIONS

#### [Reserved]

# Subchapter 2 — Multi-County Planning and Development Organizations

SECTION.		SECTION.	
14-166-201.	Purpose.		tion of organizations.
14-166-202.	Designation of districts.	14-166-204.	Allocation of payments.
14-166-203.	Recognition and qualific	a- 14-166-205.	Conditions of payments.

# 14-166-201. Purpose.

(a)(1) The purpose of this subchapter is to encourage multi-county planning and development organizations which have been formed, or which may be formed in the future, as voluntary nonprofit associations to promote economic development, to assist local governments and private organizations in obtaining federal grants and loans, to prepare comprehensive regional plans for economic development and improved government services, to enlist private support for these activities, and to coordinate private and public programs in the multi-county districts.

(2) Recognizing the beneficial services to be provided the people of this state through the activities of such multi-county planning and development organizations established for the aforementioned purposes, and in order to encourage such organizations in their efforts to provide these beneficial services, the General Assembly establishes a program of providing financial assistance to the associations to enable them to continue and expand their activities in furtherance of the purposes of this subchapter.

(b) Nothing in this subchapter is intended to be inconsistent with or

contrary to a policy of relying on the private enterprise system.

**History.** Acts 1969, No. 118, § 1; A.S.A. 1947, § 9-324.

#### **CASE NOTES**

#### State Action.

Where a nonprofit corporation has been created by virtue of state law, the state government has provided significant financial support for the activities of the corporation, the state has delegated functions relating to the planning and delivery of public services to the corporation, the corporation has engaged in activities normally performed by governmental agencies, the corporation has worked in cooperation with various agencies or instrumentalities of state government,

and the supervision of the affairs of the corporation has been vested in a board of directors, the majority of which are local elected officials, the conduct of the "private" nonprofit corporation has become so entwined with governmental policies and so impregnated with a governmental character as to subject the conduct of the corporation to the institutional limitations placed upon state action. Gilbreath v. East Ark. Planning & Dev. Dist., Inc., 471 F. Supp. 912 (E.D. Ark. 1979).

# 14-166-202. Designation of districts.

(a) The General Assembly recognizes as planning and development districts the boundaries of the following eight (8) economic development districts:

(1) Northwest Arkansas Economic Development District, Inc., consisting of Benton, Washington, Madison, Carroll, Boone, Newton, Marion, Searcy, and Baxter counties;

(2) North Central Arkansas Economic Development District, Inc., consisting of Fulton, Izard, Sharp, Stone, Independence, Jackson, Van

Buren, Cleburne, White, and Woodruff counties;

(3) Northeast Arkansas Economic Development District, Inc., consisting of Randolph, Clay, Lawrence, Greene, Craighead, Mississippi, Poinsett, Cross, Crittenden, St. Francis, Lee, and Phillips counties;

(4) Southeast Arkansas Economic Development District, Inc., consisting of Grant, Jefferson, Arkansas, Cleveland, Lincoln, Desha, Bra-

dley, Drew, Chicot, and Ashley counties;

- (5) Southwest Economic Development District of Arkansas, Inc., consisting of Sevier, Howard, Little River, Hempstead, Nevada, Ouachita, Dallas, Calhoun, Miller, Lafayette, Columbia, and Union counties;
- (6) Western Arkansas Economic Development District, Inc., consisting of Crawford, Franklin, Sebastian, Logan, Scott, and Polk counties;
- (7) West Central Arkansas Economic Development District, Inc., consisting of Johnson, Pope, Conway, Yell, Perry, Montgomery, Garland, Pike, Clark, and Hot Spring counties;

(8) Central Arkansas Economic Development District, Inc., consisting of Faulkner, Saline, Pulaski, Lonoke, Prairie, and Monroe counties.

- (b)(1) Nothing in this subchapter is intended to change or conflict with the status of regional and metropolitan planning commissions or councils of governments established under §§ 14-17-301 14-17-309 and 14-56-501 14-56-509.
- (2) This subchapter does not change the designation of urban and metropolitan planning organizations presently recognized by the Department of Finance and Administration for programs of the Depart-

ment of Housing and Urban Development or any other department of the federal government.

**History.** Acts 1969, No. 118, § 2; A.S.A. 1947, § 9-325.

#### 14-166-203. Recognition and qualification of organizations.

- (a) The governing boards of directors of the eight (8) economic development districts are recognized as the representative organizations of the initial planning and development districts as recognized in § 14-166-202.
- (b) In order to qualify for the benefits of the provisions of this subchapter, the representative organization of a planning and development district shall have a governing board of directors, a majority of whose members are elected officials of local governments and the remainder of whose members represent economic development organizations and organizations broadly representative of diverse community interests.
- (c)(1) The operations of representative organizations of planning and development districts shall be solely within the discretion and control of the local governing boards of directors of the respective districts, it not being the intention of the General Assembly that anything in this subchapter creates any power, authority, or control in any state agency over the management and operations of the organizations.
- (2) Continued state financial support of organizations as provided in this subchapter shall terminate with respect to any organization that uses state funds for any purpose not within the intent and purposes of this subchapter until the organization shall make restitution for any misused funds and furnishes proof of compliance with respect to future operations.

**History.** Acts 1969, No. 118, § 3; A.S.A. 1947, § 9-326.

# 14-166-204. Allocation of payments.

- (a)(1) The Department of Finance and Administration is authorized to make payments from time to time to officially recognized organizations of planning and development districts from state funds appropriated for that purpose.
- (2) Payments shall be scheduled as nearly as possible to begin on July 1 of each fiscal year and on the first day of each calendar quarter thereafter.
- (b)(1) Funds appropriated for payments to recognized organizations of planning and development districts shall be allocated, in equal shares, among the initial eight (8) recognized districts as established in § 14-166-202.
- (2) If, in the future, any change occurs in the district boundaries of any of the initial eight (8) districts, as authorized in § 14-166-202, the

number one (1) allocation of appropriated funds to the former districts which comprise counties reorganized in the new district shall be apportioned to the new district in accordance with equitable criteria established by the Department of Finance and Administration and published in advance prior to the establishment of the new district.

**History.** Acts 1969, No. 118, § 4; A.S.A. 1947, § 9-327.

# 14-166-205. Conditions of payments.

(a)(1) Whenever the General Assembly shall have appropriated funds to be used for making payments as authorized in this subchapter, the Department of Finance and Administration shall notify the respective boards of directors of the planning and development districts of the amount allocated to the district as provided in § 14-166-204 and shall notify the district that application for the funds may be made upon forms provided by the department.

(2) Upon receipt of application for such allocated funds from a district, the department shall determine that the following conditions

have been met before making payments:

(A) The organization applying for payment is officially recognized as a designated district in accordance with § 14-166-202 and § 14-166-203:

(B) The governing board of directors of the organization shall certify that a proposed budget has been established for the expenditures of state and local funds for purposes consistent with the

purposes of this subchapter;

(C) The organization has obtained nonfederal matching funds committed from local governments or private sources at least equal to the amount of the payment of state funds, and the president or treasurer of the board of directors of the organization shall certify, from time to time, that such matching funds from local or private sources are on deposit to the organization's own account before quarterly payments of state funds may be made to the district;

- (D) At the end of each fiscal year, an audited report of expenditures of the district shall be submitted to the department, and any state funds unexpended or unobligated by June 30 shall be returned by the district to the State Treasury. In addition, if the district shall have used any state funds for any purpose not within the purposes of this subchapter, the amount thereof shall be reimbursed to the State of Arkansas before any additional payments may be made to the district.
- (b) Upon receipt of the application for funds from a district, the department shall review it, and if the department shall determine that the district is qualified to receive payments under this subchapter, state funds shall be paid to the district on a dollar-for-dollar matching basis of funds provided from local or private nonfederal sources. However, in no event may state matching funds exceed the amount of funds

allocated to the district for the fiscal year from funds appropriated for it.

(c)(1) It is the specific intention of the General Assembly that all or part of the state and local funds may be used to qualify for matching federal funds to be used for the purposes provided in this subchapter.

(2) In the event a district shall not qualify for the total amount of state funds allocated to the district during any fiscal year because of failure to provide the required matching funds from nonfederal local or private sources, the amount thereof for which the district does not qualify shall remain in the State Treasury and shall not be apportioned for payment to other districts, it being the intention of this section that each district shall receive no payment in excess of the pro rata share of state funds allocated to the district.

**History.** Acts 1969, No. 118, § 5; A.S.A. 1947, § 9-328.

#### **CHAPTER 167**

#### **ENERGY RESOURCES AND CONSERVATION**

#### SUBCHAPTER.

- 1. GENERAL PROVISIONS. [RESERVED.]
- 2. Energy Conservation and Renewable Energy Resource Financing.

Cross References. Energy Conservation Endorsement Act, § 23-3-401 et seq. § 15-10-201 et seq.

#### RESEARCH REFERENCES

Am. Jur. 83 Am. Jur. 2d, Zoning, § 359 et seq.

# Subchapter 1 — General Provisions

# [Reserved]

# Subchapter 2 — Energy Conservation and Renewable Energy Resource Financing

SECTION.		SECTION.	
14-167-201.		14-167-207.	Bonds — Issuance generally.
14-167-202.	Legislative findings and pub-		Bonds — Terms and condi-
	lic policy.		tions.
14-167-203.	Definitions.	14-167-209.	Bonds — Trust indenture,
14-167-204.	Construction.		lease, etc.
14-167-205.	Energy project authority.	14-167-210.	Bonds - Sale.
14-167-206.	Authority to fund.		Bonds, coupons — Execution.

SECTION.

14-167-212. Bonds — Successive issues.

14-167-213. Bonds — Priority among issues.

14-167-214. Bond obligation.

14-167-215. Refunding bonds.

14-167-216. Mortgage lien.

SECTION.

14-167-217. Receivership.

14-167-218. Bonds — Tax exemption.

14-167-219. Public funds investment.

14-167-220. Intergovernmental agreements.

Cross References. Local Government Bond Act of 1985, § 14-164-301 et seq.

Effective Dates. Acts 1981, No. 53, § 16: Feb. 12, 1981. Emergency clause provided: "It is hereby found and declared that energy facilities are essential to the continued health, welfare, safety, economic growth and development of the State of Arkansas and its people, and that the availability of permanent financing for

energy facilities on favorable terms is necessary. This Act is immediately necessary in order that such facilities may be so financed and accomplished and the resulting public benefits realized. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety shall be in effect from and after its passage and approval."

#### 14-167-201. Title.

This subchapter shall be referred to, and may be cited as, the "Energy Conservation and Renewable Energy Resource Finance Act."

**History.** Acts 1981, No. 53, § 1; A.S.A. 1947, § 13-2401.

# 14-167-202. Legislative findings and public policy.

(a) The General Assembly finds that:

(1) The State of Arkansas is confronted with a severe energy crisis;

(2) The demand for fuels has outstripped the available supplies;

(3) The cost to the consumer for energy usage continues to increase at an accelerated rate:

(4) A great and growing number of residents of this state can no

longer afford basic energy needs;

(5) The energy crisis has adversely affected the growth and stability of agriculture, commerce, and industry within the state, producing

widespread unemployment;

(6) The energy crisis will be perpetuated by a continued dependence on depletable energy resources which are subject to rapid increases in price and uncertain availability; and by the wasteful and inefficient use of available energy supplies;

(7) These conditions are inimical to the economic security of the state

and the health, welfare, and prosperity of its citizens.

(b) It is declared to be the public policy and responsibility of this state to encourage energy conservation and to promote the development and use of renewable energy resources, in order to alleviate the undesirable social and economic conditions created by the energy crisis.

(c) The General Assembly finds that the public policy and responsibility of the state as set forth in this section cannot be fully attained without the use of public financing, and it is the purpose of this subchapter to make such financing available for energy facilities which will reduce energy consumption or make use of renewable energy resources in residential, commercial, industrial, and agricultural application.

**History.** Acts 1981, No. 53, § 2; A.S.A. 1947, § 13-2402.

#### 14-167-203. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Facilities" or "energy facilities" means any real property, personal property, or mixed property of any and every kind which, in residential, commercial, industrial, or agricultural applications:

(A) Reduces the amount of energy required to perform desired

tasks; or

(B) Utilizes renewable energy resources to supply energy needs;

(2) "Renewable energy resources" means any technology or source of energy which:

(A) Does not depend on the use of depletable fuels such as oil,

natural gas, and coal or of nuclear fuels; and

(B) Makes use of nondepletable supplies of energy, including, without limitation, solar, wind, bioconversion, falling or flowing water, geothermal deposits, or municipal, commercial, industrial,

agricultural, or individual waste products;

(3) "Acquire" means to obtain at any time, by gift, purchase, or other arrangement, any energy facilities, including, without limitation, those theretofore existing, those theretofore constructed and equipped, those theretofore partially constructed and equipped, and those being constructed and equipped at the time of acquisition, for such consideration and pursuant to such terms and conditions as the governing body of the municipality or the county shall determine;

(4) "Construct" means to acquire or build extensions, in whole or in part, in such manner and by such method, including contracting therefor, and if the latter, by negotiation or bidding upon such terms and pursuant to such advertising, as the municipality or county shall determine to be in the public interest and necessary under the circumstances existing at the time, to accomplish the purposes of and

authorities set forth in this subchapter;

(5) "Equip" means to install or place in or on any building or structure equipment of any and every kind, whether or not affixed;

(6) "Governing body" means the council, board of directors, or other like body in which the legislative functions of a municipality are vested,

or the quorum court of the county;

(7) "Lease" means to lease for such rentals, for such periods, and upon such terms and conditions as the municipality or county shall determine and the granting of such extension and purchase options for such prices and upon such terms and conditions as the municipality or county shall determine;

(8) "Municipality" means a city of the first or second class or an

incorporated town;

(9) "Sell" means to sell for such price, in such manner, and upon such terms as the municipality shall determine, including, without limitation, public or private sale and, if public, pursuant to such advertisement as the municipality or county shall determine, sell for cash or credit payable in lump sum or in installments over such period as the municipality or county shall determine;

(10) "Loan" means to loan for such periods, at such rates of interest, as fixed by the ordinance authorizing their issuance, in such manner, and upon such terms and conditions as the municipality or county shall determine, including, without limitation, a secured or unsecured loan.

**History.** Acts 1981, No. 53, § 3; A.S.A. 1947, § 13-2403.

#### 14-167-204. Construction.

This subchapter is to be liberally construed to accomplish the purposes of it and shall be the sole authority necessary to be complied with. To this end, it shall not be necessary to comply with general provisions of other laws dealing with energy facilities, their acquisition, construction, leasing, encumbering, or disposition.

**History.** Acts 1981, No. 53, § 14; A.S.A. 1947, § 13-2414.

# 14-167-205. Energy project authority.

- (a) Any municipality and any county in this state is authorized to own, acquire, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, contract concerning, or otherwise deal in, or dispose of, or make loans to finance the acquisition, construction, reconstruction, extension, equipment, or improvement of energy facilities.
- (b) Any such undertaking will be referred to in this subchapter as an "energy project."

**History.** Acts 1981, No. 53, § 4; A.S.A. 1947, § 13-2404.

# 14-167-206. Authority to fund.

- (a) Municipalities and counties are authorized to use any available revenues for the accomplishment of energy projects, either alone or together with other available funds and revenues, and may issue bonds, as authorized in this subchapter, for the accomplishment of energy projects, either alone or together with other available funds and revenues.
- (b) Bonds may be issued in such principal amount as shall be sufficient to pay the cost of accomplishing the energy project involved,

the cost of issuing bonds, the amount necessary for a reserve, if deemed desirable, the amount necessary to provide for debt service on the bonds until revenues for the payment of them are available, and any other costs and expenditures of whatever nature incidental to the accomplishment of the energy project involved.

**History.** Acts 1981, No. 53, § 5; A.S.A. 1947, § 13-2405.

# 14-167-207. Bonds — Issuance generally.

The issuance of bonds shall be by ordinance of the municipality or county.

**History.** Acts 1981, No. 53, § 6; A.S.A. 1947, § 13-2406.

#### 14-167-208. Bonds — Terms and conditions.

- (a) As the ordinance authorizing their issuance may provide, the bonds may:
  - (1) Be in such form and denominations:
  - (2) Be exchangeable for bonds of another denomination;
  - (3) Be made payable at such places within or without the state;
  - (4) Be issued in one (1) or more series;
  - (5) Bear such date or dates;
- (6) Mature at such time or times, not exceeding forty (40) years from their respective dates;
  - (7) Bear interest at such rate or rates;
  - (8) Be payable in such medium of payment;
  - (9) Be subject to such terms of redemption; and
- (10) Contain such terms, covenants, and conditions, including, without limitation, those pertaining to:
  - (A) The custody and application of the proceeds of the bonds;
  - (B) The collection and disposition of revenues;
  - (C) The rights, duties, and obligations of the municipality or county and the trustee for the holders and registered owners of the bonds; and
    - (D) The rights of the holders and registered owners of the bonds.
- (b) Subject to provisions of the ordinance or of the trust indenture, as prescribed in this section or § 14-167-209 pertaining to registration, the bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas.

**History.** Acts 1981, No. 53, § 6; A.S.A. 1947, § 13-2406.

# 14-167-209. Bonds — Trust indenture, lease, etc.

(a) The ordinance authorizing the bonds may provide for the execution by the municipality or county of an indenture which defines the rights of the holders and registered owners of the bonds and provides for the appointment of a trustee, who may be a trustee within or without the state, for the holders and registered owners of the bonds.

(b) The indenture may control the priority between successive issues and may contain any other terms, covenants, and conditions that are deemed desirable, including without limitation, those pertaining to:

(1) The custody and application of the proceeds of the bonds;

(2) The maintaining of rates and charges;

(3) The collection and disposition of revenues;

(4) The maintenance of various funds and reserves;

(5) The nature and extent of the security and pledging of revenues;

(6) The rights, duties, and obligations of the municipality or county and the trustee; and

(7) The rights of the holders and registered owners of the bonds.

(c) It shall not be necessary for the municipality or county to publish any indenture, lease, or other agreement if:

(1) The ordinance authorizing an indenture, lease, or other agreement is published as required by law governing the publication of

ordinances of a municipality or county;

(2) The ordinance advises that a copy of the indenture, lease, or other agreement, as the case may be, is on file in the office of the clerk or recorder of the municipality or the county clerk of the county for inspection by any interested person; and

(3) The copy of the indenture, lease, or other agreement, as the case may be, is actually filed with the clerk or recorder of the municipality or

the county clerk of the county.

**History.** Acts 1981, No. 53, § 6; A.S.A. 1947, § 13-2406.

# 14-167-210. Bonds — Sale.

The bonds may be sold for such price, including, without limitation, sale at a discount, and in such manner as the municipality or county may determine by ordinance.

**History.** Acts 1981, No. 53, § 6; A.S.A. 1947, § 13-2406.

# 14-167-211. Bonds, coupons — Execution.

(a)(1) The bonds shall be executed by the mayor and the city clerk or recorder of the municipality or the county judge and county clerk of the county, with either the facsimile or manual signature of the mayor or county judge, but with the manual signature of the clerk or recorder and of the county clerk.

(2) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of the bonds or coupons, their signatures shall nevertheless be valid and sufficient for all purposes.

(b) The coupons attached to the bonds may be executed by the facsimile signature of the mayor of the municipality or the county judge

of the county.

**History.** Acts 1981, No. 53, § 6; A.S.A. 1947, § 13-2406.

#### 14-167-212. Bonds — Successive issues.

There may be successive bond issues for the purpose of financing the same energy project, and there may be successive bond issues for financing the cost of reconstructing, replacing, constructing additions to, extending, improving, and equipping energy projects already in existence, whether or not originally financed by bonds issued under this subchapter with each successive issue to be authorized as provided by this subchapter.

**History.** Acts 1981, No. 53, § 6; A.S.A. 1947, § 13-2406.

# 14-167-213. Bonds — Priority among issues.

Priority between and among issues and successive issues as to security of the pledge of revenues and lien on the energy project involved may be controlled by the ordinance authorizing the issuance of bonds under this subchapter.

**History.** Acts 1981, No. 53, § 6; A.S.A. 1947, § 13-2406.

# 14-167-214. Bond obligation.

(a)(1) The bonds issued under this subchapter shall not be general obligations of the municipality or county but shall be special obligations, and in no event shall the bonds constitute an indebtedness of the municipality or county within the meaning of any constitutional or statutory limitation.

(2) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter and that it does not constitute an indebtedness of the municipality or county within any

constitutional or statutory limitation.

(b) The principal of, and interest on, the bonds shall be secured by a pledge of, and shall be payable from, revenues derived from the energy project acquired, constructed, reconstructed, extended, or improved, in whole or in part, with the proceeds of the bonds.

**History.** Acts 1981, No. 53, § 7; A.S.A. 1947, § 13-2407.

# 14-167-215. Refunding bonds.

(a)(1) Bonds may be issued for the purpose of refunding any obligations issued under this subchapter.

(2) Refunding bonds may be combined with bonds issued under the

provisions of §§ 14-167-207 — 14-167-213 into a single issue.

(b)(1) When bonds are issued under this section for refunding purposes, the bonds may either be sold or delivered in exchange for the outstanding obligations.

(2) If sold, the proceeds may be either applied to the payment of the obligations refunded or deposited in escrow for the retirement of them.

- (c)(1) All bonds issued under this section shall, in all respects, be authorized, issued, and secured in the manner provided for other bonds issued under this subchapter and shall have all the attributes of such bonds.
- (2) The ordinance under which refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the obligations refunded by them.

**History.** Acts 1981, No. 53, § 8; A.S.A. 1947, § 13-2408.

# 14-167-216. Mortgage lien.

(a) The ordinance or indenture referred to in § 14-167-207 or § 14-167-209 may, but need not, impose a foreclosable mortgage lien upon the land, buildings, or other properties acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of bonds issued under this subchapter.

(b) The nature and extent of the mortgage lien may be controlled by the ordinance or indenture including, without limitation, provisions

pertaining to:

(1) The release of all or part of the land, buildings, or other properties from the mortgage lien; and

(2) The priority of the mortgage lien in the event of successive bond

issues as authorized by § 14-167-212.

- (c) The ordinance or indenture authorizing or securing the bonds may authorize any holder or registered owner of bonds issued under the provisions of this subchapter, or a trustee on behalf of all holders and registered owners, either at law or in equity, to enforce the mortgage lien and, by proper suit, compel the performance of the duties of the officials of the issuing municipality or county set forth in this subchapter and set forth in the ordinance or indenture authorizing or securing the bonds.
- (d) References in this subchapter to mortgage lien shall include and mean security interest in any personal property embodied in properties

acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of bonds issued under this subchapter.

**History.** Acts 1981, No. 53, § 9; A.S.A. 1947, § 13-2409.

# 14-167-217. Receivership.

(a)(1) The ordinance or indenture referred to in § 14-167-207 or § 14-167-209 may, but need not, provide that in the event of a default in the payment of the principal of, or interest on, any bonds issued under this subchapter, any court having jurisdiction may appoint a receiver to take charge of the land, buildings, or other properties acquired, constructed, reconstructed, extended, equipped, or improved,

in whole or in part, with the proceeds of bonds.

(2) The receiver shall have the power to operate and maintain the land, buildings, or other properties and to charge and collect rates or rents sufficient to provide for the payment of the principal of and interest on the bonds, after providing for the payment of all costs of receivership and operating expenses of the land, buildings, or other properties, and to apply the income and revenues derived from the land, buildings, or other properties in conformity with this subchapter and the ordinance or indenture authorizing or securing the bonds.

(3) When the default has been cured, the receivership shall be ended

and the properties returned to the municipality or county.

(b)(1) The relief afforded by this section shall be construed to be in addition and supplemental to the remedies that may be afforded to the trustee for the holders and registered owners of the bonds in the

ordinance or indenture authorizing or securing the bonds.

(2) The relief shall be so granted and administered as to accord full recognition to priority rights of holders and registered owners of the bonds as to the pledge of revenues from, and the mortgage lien on, land, buildings, or other properties as specified in, and fixed by, the ordinance or indenture authorizing or securing successive bond issues.

**History.** Acts 1981, No. 53, § 10; A.S.A. 1947, § 13-2410.

# 14-167-218. Bonds — Tax exemption.

Bonds issued under this subchapter and interest on them shall be exempt from all state, county, municipal, and school district taxes.

**History.** Acts 1981, No. 53, § 11; A.S.A. 1947, § 13-2411.

#### 14-167-219. Public funds investment.

(a) Any municipality, or any board, commission, or other authority duly established by ordinance of any municipality, or the boards of trustees, respectively, of firemen's relief and pension funds and policemen's pension and relief funds of any municipality, or the board of trustees of any retirement system created by the General Assembly. may invest, in its discretion, any of its funds not immediately needed for its purposes in bonds issued under the provisions of this subchapter.

(b) Bonds issued under the provisions of this subchapter shall be

eligible to secure the deposit of public funds.

History. Acts 1981, No. 53, § 12; A.S.A. 1947, § 13-2412.

# 14-167-220. Intergovernmental agreements.

Municipalities and counties are authorized to enter into and carry out appropriate agreements with any agency or political subdivision of the federal government or of the State of Arkansas pertaining to the accomplishment of the purposes authorized by this subchapter, including, without limitation, loan agreements for the borrowing of money and agreements pertaining to grants.

History. Acts 1981, No. 53, § 13; A.S.A. 1947, § 13-2413.

# CHAPTER 168

# COMMUNITY REDEVELOPMENT GENERALLY

SUBCHAPTER.

- 1. General Provisions. [Reserved.]
- 2. Community Redevelopment Financing.

#### RESEARCH REFERENCES

Am. Jur. 40 Am. Jur. 2d, Housing, § 1 et seq.

#### SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

# SUBCHAPTER 2 — COMMUNITY REDEVELOPMENT FINANCING

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Effective Dates. Acts 1983, No. 421, § 10: Mar. 13, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that this Act is immediately necessary to make technical corrections in the Community

Redevelopment Financing Act. Therefore, an emergency is declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

## 14-168-201, Title,

This subchapter shall be known and may be cited as the "Arkansas Community Redevelopment Financing Act."

**History.** Acts 1981, No. 716, § 1; A.S.A. 1947, § 13-2501.

Publisher's Notes. Acts 1981, No. 716, § 13, provided that "upon enactment of this subchapter, the Attorney General shall promptly commence an action seeking a declaratory judgment to determine whether the Arkansas Constitution permits a municipality to finance certain public improvements with the taxes derived from the increase in equalized tax-

able valuation within a redevelopment project district in lieu of the taxes being received by the local governmental entities having authority to levy a tax within the district, as provided by this subchapter. The Attorney General shall petition for leave to commence the action as an original action before the Arkansas Supreme Court; if the petition is denied, he shall commence the action in the Circuit Court of Pulaski County."

## 14-168-202. Legislative findings and purpose.

(a) The General Assembly finds:

(1) That the existing system of allocating aggregate property tax revenues among tax levying municipalities and public entities has resulted in significant inequities and deterrents. The cost of public works or improvements within a municipality has been borne entirely by the municipality, while the expansion of tax base which is stimulated, directly or indirectly, by the improvements benefits not only the municipality but also all public tax levying entities which share the tax base. This situation is inequitable. Moreover, when the cost to a

municipality of a public improvement project exceeds the future benefit to the municipality resulting from it, the municipality may decide not to undertake such projects. This situation has resulted in the postponement or cancellation of socially desirable projects. Also, the current shortage of funds for property acquisition and preparation and for construction and rehabilitation has severely reduced redevelopment and renewal projects;

(2) That the financial inability to improve communities contributes to disease, environmental deterioration, and poverty and impairs the economic value of large areas which are characterized by depreciated values, impaired investments, and reduced capacity to pay taxes;

(3) That these conditions are a menace to the health, safety, morals, and welfare of the citizens of the state and necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and

other public services; and

(4) That the recurring shortage of funds for construction and rehabilitation has caused substantial unemployment in the construction industry, which results in hardships, wastes human resources, increases the public assistance burdens of the state, impairs the security and formation of family life, impedes the economic and physical development of the state, and adversely affects the welfare, health, and prosperity of all the people of this state.

(b) The General Assembly further finds that accomplishment of the vital and beneficial public purposes is being frustrated because of a lack of incentives and financial resources. The purpose of this subchapter is to create a viable procedure by which a municipality, through its own initiative and efforts, may finance projects which will tend to accom-

plish laudable community improvement objectives.

(c) A more stable and adequate source of funds for community improvement construction and rehabilitation financing is required to encourage community improvement in an orderly and sustained manner, and thereby reduce and improve the enumerated conditions. In order to encourage the investment of private capital and to encourage private enterprise to make such community improvements so as to alleviate deteriorating conditions and improve the health, safety, convenience, and welfare of the citizens of the state, provision should be made to supplement the powers of municipalities to finance redevelopment projects by adding the tax-incremental method of financing such improvements.

(d) It is declared that for the benefit of the people of this state, for the increase of their commerce, welfare, and prosperity, and for the improvement of their living conditions, it is essential to provide new employment opportunities, to prevent, arrest, and alleviate blight and decay in communities, to increase the supply of housing available at low rentals, to improve the tax base and to improve the general economy of the State of Arkansas and that it is the purpose of this subchapter to provide an additional and alternative means to municipalities to

finance public facilities and residential, commercial, and industrial development and revitalization, all to the public benefit and good, in the manner provided in this subchapter.

**History.** Acts 1981, No. 716, § 2; A.S.A. 1947, § 13-2502.

### 14-168-203. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Redevelopment project" means:

(A) The acquisition of the land and improvements on it, if any, within the project area and clearance of the land so acquired; or

(B) The development, redevelopment, revitalization, or conservation of the project area through rehabilitation of buildings or other improvements or through acquisition by gift, purchase, or eminent domain of land and improvements on it, if any, and demolition, removal, or rehabilitation of any such improvement whenever necessary to provide land for needed public facilities, public housing, or industrial or commercial development or revitalization, or to eliminate unhealthful, unsanitary, or unsafe conditions, or lessen density, mitigate or eliminate traffic congestion, reduce traffic hazards, eliminate obsolete or other uses detrimental to the public welfare, or otherwise remove or prevent the spread of blight or deterioration; or

(C) A project involving any of the aforementioned types of projects. A project may include the provision of financial and other assistance in the relocation of persons and organizations displaced as a result of carrying out the project, planning, and construction of needed public facilities, the installation, construction, or reconstruction of public and private ways and sidewalks, public utilities and services, parks and landscaping, playgrounds, off-street parking lots, traffic or fire control and police communication systems, and other like improvements necessary for carrying out the project plan, together with such site improvements as are necessary for the preparation of any sites for uses in accordance with the plan, and making any land or improvements acquired in the project area available, by sale or by lease, for public housing or for development, redevelopment, or rehabilitation by private enterprise for commercial or industrial uses in accordance with the plan;

(2) "Project plan" means the plan which shall be adopted by a municipality for a redevelopment project. The plan shall set forth an estimate of project costs and the amount and sources of funds to be used to defray such costs and shall include provisions for tax increment financing of project costs, in whole or in part. The tax increment

financing provision of the plan shall:

(A) Set forth the amount of indebtedness to be incurred pursuant

to this subchapter;

(B) Set forth an estimate of the tax increment to be generated as a result of the project;

(C) Set forth the method for calculating the tax increment, together with any provision for adjustment of the method of calcula-

tion: and

(D) Designate the board or officer of the municipality or county responsible for calculating the tax increment. The plan may include such other provisions as may be deemed necessary in order to carry out the tax increment financing of the project. The project plan shall be consistent with such comprehensive plan for the municipality as is then applicable, shall be sufficiently complete to indicate the location and boundaries of the redevelopment project area and such land acquisition, demolition, removal, and rehabilitation of structures and such development, redevelopment, and general public improvements as are proposed to be carried out within the project area and indicate the proposed method for relocation of such persons or organizations

as may be displaced as a result of carrying out the project;

(3) "Blighted area" means an area in which the structures, building, or improvements which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding or the existence of conditions which endanger life or property by fire and other causes or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime and is detrimental to the public health, safety, morals, or welfare. "Blighted area" includes any area which, by reason of the presence of a substantial number of substandard, slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax on special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes or any combination of such factors, substantially impairs or arrests the sound growth of a city, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use, or any area which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community;

(4) "Redevelopment project district" means a geographic area within a city defined and created by resolution of the local legislative body. The district may consist of one (1) or more parcels or lots of land, if, upon adoption of the project plan, the aggregate taxable valuation of the property within all redevelopment districts within the municipality does not exceed twenty-five percent (25%) of the taxable valuation of all

property subject to taxation in the municipality;

(5) "Project costs" means expenditures made in preparation of the project plan and made or estimated to be made or monetary obligations incurred or estimated to be incurred by the municipality which are listed in the project plan as costs of public works or improvements within a redevelopment project district, plus any costs incidental thereto, diminished by any income, special assessments, or other revenues, other than tax increments, received, or reasonably expected to be received, by the municipality in connection with the implementation of the plan. Project costs include, but are not limited to:

(A) Capital costs, including, but not limited to, the actual costs of the construction of public works or improvements, new buildings, structures, and fixtures, the demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and fixtures; the acquisition of equipment; and the clearing and grading of land;

(B) Financing costs, including, but not limited to, all interest paid to holders of evidences of indebtedness issued to pay for project costs and any premium paid over the principal amount of it because of the

redemption of the obligation prior to maturity;

(C) Real property assembly costs, meaning any deficit incurred resulting from the sale or lease as lessor by the municipality of real or personal property within a redevelopment district for consideration which is less than its cost to the municipality;

(D) Professional service costs, including, but not limited to, those costs incurred for architectural, planning, engineering, and legal

advice and services;

(E) Imputed administrative costs, including, but not limited to, reasonable charges for the time spent by the municipal employees in connection with the implementation of a project plan;

(F) Relocation costs, including, but not limited to, those relocation

payments, made following condemnation;

(G) Organizational costs, including, but not limited to, the costs of conducting environmental impact and other studies and the costs of informing the public with respect to the creation of redevelopment project areas and the implementation of project plans;

(H) The amount of any contributions made in connection with the

implementation of the project plan;

(I) Payments made, in the discretion of the local legislative body, which are found to be necessary or convenient to the creation of

redevelopment areas or the implementation of project plans;

(J) That portion of costs related to the construction or other environmental protection devices, storm or sanitary sewer lines, water lines, or amenities or streets or the rebuilding or expansion of streets, the construction, alteration, rebuilding, or expansion of which is necessitated by the project plan for a district, whether or not the construction, alteration, rebuilding, or expansion is within the area;

(6) "City" means any municipal corporation in this state;

(7) "Local legislative body" means the city council or board of directors;

(8) "Planning commission" means a municipality's planning commission, as created under §§ 14-56-401 — 14-56-408 and 14-56-410 —

14-56-424, or a city redevelopment project plan committee of the local legislative body if the city has no such commission;

(9) "Real property" means all lands including improvements and fixtures on them and property of any nature appurtenant to them or used in connection with them and every estate, interest, and right, legal or equitable, in them including terms for years and liens by way of judgment, mortgage, or otherwise, and the indebtedness secured by the

liens;
(10) "Tax increment" means that amount obtained by multiplying the total county, city, school, or other local general property taxes levied on all taxable property within a redevelopment project district in a year, except for that amount of the general property taxes which is equal to the amount obtained by multiplying the millage obligated to retire any bonded indebtedness of the school district in a redevelopment project district by the assessed valuation of all taxable property within a redevelopment project district, by a fraction having as its numerator the value increment for that year in such district and as a denominator that year's equalized value of all taxable property in the district. In any year, a tax increment is "positive" if the value increment is positive; it is "negative" if the value increment is negative;

(11) "Tax incremental base" means the aggregate value, as equalized, of all taxable property within a redevelopment project district on the date of the filing of the most recent assessors' abstract preceding the

date of creation of the district;

(12) "Value increment" means the equalized value of all taxable property in a redevelopment project district in any year minus the tax incremental base. In any year, the "value increment" is positive if the tax incremental base is less than the aggregate value of the equalized taxable property; it is negative if that base exceeds that aggregate value.

History. Acts 1981, No. 716, § 4; 1983, No. 421, §§ 1-4; A.S.A. 1947, § 13-2504. Cross References. Housing authori-

## 14-168-204. Construction.

The General Assembly declares that this subchapter is necessary for the welfare of this state and its inhabitants, and it is the intent of the General Assembly that it is to be broadly construed to effect its purpose.

**History.** Acts 1981, No. 716, § 12; A.S.A. 1947, § 13-2512.

## 14-168-205. Powers supplemental.

The powers conferred by this subchapter shall be in addition and supplemental to the powers conferred upon municipalities and improvement districts by the General Assembly relating to the issuance of bonds and by any other law.

History. Acts 1981, No. 716, § 3; A.S.A. 1947, § 13-2503.

## 14-168-206. Powers generally.

In addition to any other powers conferred by law, a municipality may exercise any powers necessary and convenient to carry out the purpose of this subchapter, including power to:

(1) Create redevelopment project areas and to define the boundaries

of the districts:

(2) Cause project plans to be prepared, to approve the plans, and to implement the provisions and effectuate the purposes of the plans;

(3) Issue redevelopment bonds and notes and to pledge value incre-

ments and other redevelopment revenues for repayment of them; (4) Deposit moneys into the special fund or any redevelopment

project district:

(5) Enter into any contracts or agreements, including agreements with bondholders, determined by the local legislative body to be necessary or convenient to implement the provisions and effectuate the purposes of project plans;

(6) Receive, from the federal government or the state, loans and grants for, or in aid of, a project and to receive contributions from any

other source to defray project costs;

- (7) Designate, by ordinance or resolution, the local housing authority, the central business improvement district, or the redevelopment project district authority, as agent of the municipality to perform all actions, except the development of the master plan of the city, which are otherwise performed by the planning commission under this subchapter;
- (8) Exercise the right of eminent domain to condemn property for the purposes of implementing the redevelopment project plan. The rules and procedures set forth in §§ 18-15-301 — 18-15-307 shall govern all condemnation proceedings authorized in this subchapter;

(9) Make relocation payments to such persons, businesses, or organizations as may be displaced as a result of carrying out the project;

(10) Clear and improve property acquired by it pursuant to the project plan and construct public facilities on it or contract for the construction, development, redevelopment, rehabilitation, remodeling, alteration, or repair of the property;

(11) Cause parks, playgrounds, or schools, or water, sewer, or drainage facilities or any other public improvements which it is otherwise authorized to undertake, to be laid out, constructed, or furnished in

connection with the project:

(12) Lay out and construct, alter, relocate, change the grade of, make specific repairs upon, or discontinue public ways and construct side-

walks in, or adjacent to, the project area;

(13) Cause private ways, sidewalks, ways for vehicular travel, play-grounds, or water, sewer, or drainage facilities and similar improvements to be constructed within the project area for the particular use of the project area or those dwelling or working in it;

(14) Adopt ordinances or bylaws or repeal or modify such ordinances or bylaws or establish exceptions to existing ordinances and bylaws

regulating the design, construction, and use of buildings;

- (15) Sell, mortgage, lease, transfer, or dispose of any property, or interest therein, acquired by it pursuant to the project plan for development, redevelopment, or rehabilitation in accordance with the plan;
  - (16) Invest project revenues as provided in this subchapter; and
- (17) Do all things necessary or convenient to carry out the powers granted in this subchapter.

**History.** Acts 1981, No. 716, § 5; 1983, No. 421, §§ 5, 6; A.S.A. 1947, § 13-2505.

## 14-168-207. Creation of district.

(a) In order to implement the provisions of this subchapter, the steps set forth in this section are required.

(b) The planning commission shall designate the boundaries of a redevelopment project district recommended to be created by it and

shall submit the recommendation to the local legislative body.

(c)(1) The local legislative body or planning commission shall hold a public hearing at which interested parties are afforded a reasonable opportunity to express their views on the proposed creation of a redevelopment project district and its proposed boundaries.

(2)(A) Notice of the hearing shall be published in a newspaper of general circulation in the municipality once a week for two (2) consecutive weeks. The first such publication shall be at least fifteen

(15) days prior to the hearing.

(B) Prior to this publication, a copy of the notice shall be sent by first-class mail to the chief executive officer of all local governmental and taxing entities having the power to levy taxes on property located within the proposed redevelopment project district and to the school board of a school district which includes property located within the proposed district.

(d) The local legislative body shall adopt an ordinance which:

(1) Describes the boundaries, which may, but need not, be the same as those recommended by the planning commission, of a redevelopment project district sufficiently definite to identify with ordinary and reasonable certainty the territory included in it. In this connection, the local legislative body shall take care that the boundaries include only those units of property as are assessed for general property tax purposes;

(2) Creates the district as of a date provided in it;

(3) Assigns a name to the district for identification purposes. The first district created shall be known as Redevelopment District Number One, City of . . . . . . . . Each subsequently created district shall be assigned the next consecutive number; and

(4) Contains findings that:

- (A) Not less than twenty-five percent (25%), by area, of the real property within the district meets at least one (1) of the following criteria:
  - (i) Is a blighted area; or

(ii) Is in need of rehabilitation or conservation work within the

meaning as set forth in § 14-169-703;

- (B) The improvement of the area is likely to enhance significantly the value of substantially all of the other real property in the area. It shall not be necessary to identify the specific parcels meeting the criteria; and
- (C) The aggregate value of taxable property of the district plus all existing districts does not exceed twenty-five percent (25%) of the total value of taxable property within the city.

History. Acts 1981, No. 716, § 6; 1983, No. 421, § 7; A.S.A. 1947, § 13-2506.

# 14-168-208. Project plan — Approval.

(a) In order to implement the provisions of this subchapter, the steps

set forth in this section are required.

(b) Upon the creation of the redevelopment project district, the planning commission shall cause the preparation and adoption by the local legislative body of a project plan for each redevelopment project district and submit the plan for adoption by the local legislative body. This process shall conform to the procedures set forth in this section.

(c)(1) The planning commission shall prepare and adopt a project plan for each redevelopment project district as set forth in §§ 14-56-422 - 14-56-424 and shall submit the plan to the local legislative body.

(2) The plan shall include:

(A) A statement listing the kind, number, and location of all proposed public works or improvements within the district or, to the extent provided, outside the district;

(B) An economic feasibility study;

(C) A detailed list of estimated project costs; and

(D) A description of the methods of financing all estimated project costs and the time when the costs or monetary obligations related thereto are to be incurred.

(E) The plan shall also include:

- (i) A map showing existing uses and conditions of real property in the district:
  - (ii) A map of proposed improvements and uses in the district;

(iii) Proposed changes of zoning ordinances;

- (iv) Master plan, map, building codes, and city ordinances;
- (v) A list of estimated nonproject costs; and

(vi) A statement of the proposed method for the relocation of any

persons to be displaced.

(d)(1) The local legislative body shall hold a public hearing at which interested parties are afforded a reasonable opportunity to express their views on the proposed project plan.

(2) The hearing may be held in conjunction with the hearing set forth

in §§ 14-56-422 — 14-56-424.

- (3) Prior to publication, a copy of the notice shall be sent by first-class mail to the chief executive officer of all local governmental entities having the power to levy taxes on property within the district and to the school board of any school district which includes property located within the proposed district.
- (e)(1) Approval by the local legislative body of a project plan within one (1) year after county assessor certifies the tax incremental base of the district.
- (2) The approval shall be by resolution which contains findings that the plan is feasible and in conformity with the master plan, if any, of the municipality.

**History.** Acts 1981, No. 716, § 6; 1983, No. 421, § 7; A.S.A. 1947, § 13-2506.

## 14-168-209. Project plan — Amendment.

(a) In order to implement the provisions of this subchapter, the steps set forth in this section are required.

(b) The planning commission may, by resolution, adopt an amendment to a project plan, which amendment shall be subject to approval by the local legislative body.

(c) Approval of the amendment shall require the same findings as

provided in § 14-168-208(e)(2).

(d)(1) Adoption of an amendment to a project plan shall be preceded by a public hearing held by the planning commission as provided in § 14-168-208(d), at which interested parties shall be afforded a reasonable opportunity to express their views on the amendment.

(2)(A) Notice of the hearing shall be published in a newspaper of general circulation in the municipality once a week for two (2) consecutive weeks. The first such publication shall be fifteen (15)

days prior to the hearing.

(B) Prior to publication, a copy of the notice shall be sent by first-class mail to the chief executive officer of all local governmental entities having the power to levy taxes on property within the district and to the school board of any school district which includes property located within the proposed district.

# 14-168-210. Overlapping districts.

(a) Subject to any agreement with bondholders, a redevelopment project district may be created, the boundaries of which overlap one (1) or more existing districts. However, districts created as of the same date

may not have overlapping boundaries.

(b) If the boundaries of two (2) or more districts overlap, in determining how positive tax increments generated by that area which is within two (2) or more districts are allocated among the districts, but for no other purpose, the aggregate value of the taxable property in the district, as equalized by the county assessor and board of equalization in any year as to each earlier created district, is deemed to be that portion of the tax incremental base of the district next created which is attributable to the overlapped area.

**History.** Acts 1981, No. 716, § 10; A.S.A. 1947, § 13-2510.

## 14-168-211. Valuation of real property.

(a)(1) Upon and after the effective date of the creation of a redevelopment project district, the county assessor of the county in which the district is located shall transmit to the county clerk, upon the request of the municipality, the assessed tax incremental base and shall certify to it, in each year thereafter, the current assessed valuation for assessment of taxable real property in the project district.

(2)(A) The assessor shall undertake, upon request of the municipality, an investigation, examination, and inspection of the taxable real property in the district and shall reaffirm or revalue the current value for assessment of the property in accordance with the findings

of the investigation, examination, and inspection.

(B) The assessor shall determine, according to his best judgment from all sources available to him, the full aggregate value of the taxable property in the district which aggregate valuation, upon certification thereof by him to the clerk, constitutes the tax incremental base of the area.

(b)(1) The assessor shall not certify the district tax incremental base until he determines that each of the procedures and documents required has been timely completed and all notices required timely given.

(2) The facts supporting any document adopted or action taken to

comply shall not be subject to review by the assessor.

(c)(1)(A) The assessor shall, annually, give notice to the designated finance officer of all governmental entities having the power to levy taxes on property within each district as to the assessed value of the property and the assessed value of the tax incremental base.

(B) The notice shall also explain that the entire amount in excess of the tax incremental base allocable to a municipality will be paid to

the special fund of the redevelopment project district.

- (2) The assessor shall identify upon the assessment roll those parcels of property which are within each existing district specifying on it the name of each district.
- (d)(1) It is a rebuttable presumption that any property within a district acquired or leased as lessee by the municipality, or any agency or instrumentality thereof, within the one (1) year immediately preceding the date of the creation of the district was so acquired or leased in contemplation of the creation of the district.

(2)(A) This presumption may be rebutted by the municipality with proof that the property was so leased or acquired primarily for a purpose other than to reduce the redevelopment district tax incre-

mental base.

(B) If this assumption is not rebutted, then, in determining the tax incremental base of the district, but for no other purpose, the taxable status of the property shall be determined as though the lease or acquisition had not occurred.

**History.** Acts 1981, No. 716, § 8; 1983, No. 421, § 8; A.S.A. 1947, § 13-2508.

# 14-168-212. Division of ad valorem real property taxes.

(a) A redevelopment project plan may contain a recommendation that ad valorem taxes levied each year by any public body upon real property in the project shall be divided, in the manner specified in subsection (b) of this section, for a period not to exceed twenty (20) years after the recommended effective date of such a project plan.

(b) If the local legislative body of the municipality in which the proposed project is located finds that the project is in conformance with its redevelopment plan, it may approve a division of ad valorem tax revenues in the following manner for the time specified and shall

specify an effective date of the division.

(1) That portion of the ad valorem taxes which are produced by the levy at the rate fixed each year by or for each public body upon the tax

incremental base shall be paid to each public body.

(2)(A) That portion of the ad valorem taxes on real property in the district excluding taxes voted to retire school district bonds in excess of the tax incremental base, if any, shall be allocated to and when collected, paid into a special fund of the redevelopment project district to pay the principal of, the interest on, and any premiums due in connection with the bonds of, loans, notes, or advances of money to, or indebtedness incurred by, a district, whether funded, refunded, assumed, or otherwise, for financing or refinancing, in whole or in part, a project.

(B) When such bonds, loans, notes, advances of money, or indebtedness, if any, including interest thereon and any premiums due in connection with them, have been paid, the municipality shall so notify the county assessor and county tax collector. All subsequent ad valorem taxes upon taxable real property in such a redevelopment project district shall be paid into the general funds of the respective public bodies.

**History.** Acts 1981, No. 716, § 7; A.S.A. fund 1947, § 13-2507.

funds collected and paid into county treasury, § 26-39-201.

Cross References. Apportionment of

# 14-168-213. Tax receipts — Duties of county officials.

(a)(1) In each year subsequent to the determination of a tax increment base, the county assessor and the county board of equalization shall include no more than the tax incremental base and school millage rates for bonds of the taxable real property in the project in the assessed valuation upon which are computed the mill rates of all taxes levied by any public body in the district.

(2) In each year for which the current assessed valuation on taxable real property in the project exceeds the tax incremental base, the county treasurer shall remit to the special fund of the redevelopment project district, instead of to any public body, that portion of the ad valorem taxes on the real property in the district in excess of the tax

incremental base.

(3) The city treasurer shall deposit additional moneys into the fund pursuant to an appropriation by the local legislative body and shall deposit any additional moneys dedicated to the fund from other sources.

(b) Moneys shall be paid out of the fund only to pay project costs with respect to the district to reimburse the city for such payments or to satisfy claims of holders of redevelopment bonds or notes with respect to the district.

(c) Subject to any agreement with bondholders, moneys in the fund may be temporarily invested in the same manner as other municipal funds.

(d) After all project costs and all redevelopment bonds and notes with respect to the district have been paid or the payment thereof provided for, subject to any agreement with bondholders, any moneys remaining in the fund shall be paid over to the treasurer of each county, school district, or other public tax levying entity or to the general fund of the municipality in such amounts as belong to each, respectively, having due regard for what portion of such moneys, if any, represents tax increments not allocated to the city and what portion thereof, if any, represents voluntary deposits of the city into the fund.

**History.** Acts 1981, No. 716, § 9; A.S.A. 1947, § 13-2509.

## 14-168-214. Bonds generally.

(a) Without limiting the generality of § 14-168-213, bonds may be issued for project costs which may include interest prior to and during the carrying out of a project and for a reasonable time thereafter, with such reserves as may be required by any agreement securing the bonds and all other expenses incidental to planning, carrying out, and financing the project.

(b) Bonds issued under this subchapter shall be payable solely from project revenues and shall not be deemed to be a pledge of the faith and

credit of the municipality.

(c) Every bond issued under this subchapter shall recite on its face that it is a special obligation bond payable solely from project revenues pledged for its repayment.

**History.** Acts 1981, No. 716, § 9; A.S.A. 1947, § 13-2509.

# 14-168-215. Redevelopment bonds or notes — Authority to issue.

For the purpose of paying project costs or of refunding notes issued under this subchapter for the purpose of paying project costs, the local legislative body may issue redevelopment bonds or notes payable out of positive tax increments.

**History.** Acts 1981, No. 716, § 9; A.S.A. 1947, § 13-2509.

# 14-168-216. Redevelopment bonds or notes — Authorizing resolution.

(a)(1) Redevelopment bonds and notes shall be authorized by resolution of the local legislative body.

(2) The referendum or election may be held following the procedures

set forth in § 14-163-207.

(b)(1) The resolution shall state the name of the redevelopment project district, the amount of bonds or notes authorized, and the interest rate to be borne by the bonds or notes.

(2) The resolution may prescribe the terms, form, and content of the bonds or notes and such other matters as the local legislative body deems useful.

**History.** Acts 1981, No. 716, § 9; A.S.A. 1947, § 13-2509.

# 14-168-217. Redevelopment bonds or notes — Terms, conditions, etc.

(a)(1) Redevelopment bonds or notes may not be issued in an amount exceeding the aggregate project costs.

(2) These bonds and notes shall not be included in the computation of the constitutional debt limitation of a city.

(b)(1) The bonds or notes shall mature over a period not exceeding twenty (20) years from their date of issuance or a period terminating with the date of termination of the redevelopment project district, whichever period terminates earlier.

(2) The bonds or notes may contain a provision authorizing their redemption, in whole or in part, at stipulated prices, at the option of the municipality on any interest payment date and shall provide the

method of selecting the bonds or notes to be redeemed.

(3) The principal and interest on the bonds and notes may be payable

at any time and at any place.

(4) The bonds or notes may be payable to bearer or may be registered as to the respective interests of the persons, firms, or corporations which purchase or own the bonds or notes.

(5) The bonds or notes may be in any denominations.

(6) Each such bond or note and all interest coupons appurtenant to it are declared to be negotiable instruments.

(c) The bonds or notes may be sold at public or private sale.

(d) Insofar as they are consistent with subdivisions (a)(1), (b)(1)-(5), and subsection (c) of this section, the provisions of §§ 14-169-220 and 14-169-221 relating to procedures for issuance, form, contents, execution, negotiation, and registration of municipal bonds and notes are incorporated by reference therein.

History. Acts 1981, No. 716, § 9; A.S.A. 1947, § 13-2509.

## 14-168-218. Redevelopment bonds or notes — Security — Marketability.

To increase the security and marketability of redevelopment bonds or notes, the city may:

(1) Create a lien for the benefit of the bondholders upon any public improvements or public works financed by them or the revenues from

them; or

(2) Make such covenants and do any and all such actions, not inconsistent with the Arkansas Constitution, which may be necessary or convenient or desirable in order to additionally secure the bonds or notes or which tend to make the bonds or notes more marketable according to the best judgment of the local legislative body.

History. Acts 1981, No. 716, § 9; A.S.A. 1947, § 13-2509.

# 14-168-219. Redevelopment bonds or notes — Special fund for repayment.

(a) Redevelopment bonds and notes are payable only out of the special fund created under this subchapter.

(b)(1) The local legislative body shall irrevocably pledge all or part of

the special fund to the payment of the bonds or notes.

(2) The special fund, or the designated part thereof, may thereafter be used only for the payment of the bonds or notes and their interest

until they have been fully paid.

(c) A holder of the bonds or notes, or any coupons appurtenant to them shall have a lien against the special fund for payment of the bonds or notes and interest on them and may bring suit, either at law or in equity, to enforce the lien.

**History.** Acts 1981, No. 716, § 9; A.S.A. 1947, § 13-2509.

## 14-168-220. Redevelopment bonds or notes — Tax exemption.

Bonds and notes issued under §§ 14-168-215 — 14-168-219, together with the interest and income therefrom, shall be exempt from all state, county, and municipal income taxes.

**History.** Acts 1981, No. 716, § 9; A.S.A. 1947, § 13-2509.

## 14-168-221. Impact reports.

The Assessment Coordination Division of the Arkansas Public Service Commission, in cooperation with other state agencies and local governments, shall make a comprehensive impact report to the Governor and General Assembly at the beginning of each biennium as to the economic, social, and financial effect and impact of community redevelopment financing projects.

**History.** Acts 1981, No. 716, § 11; A.S.A. 1947, § 13-2511.

A.C.R.C. Notes. The Assessment Coordination Division of the Public Service

commission is transferred by a Type 2 transfer as provided in § 25-2-105 to the Assessment Coordination Department pursuant to § 25-28-102(a).

## **CHAPTER 169**

# HOUSING AUTHORITIES AND URBAN RENEWAL AGENCIES

#### SUBCHAPTER.

- 1. General Provisions.
- 2. Housing Authorities in Cities and Counties.
- 3. Regional Housing Authorities.
- 4. Consolidated Housing Authorities.
- 5. Rural Housing Projects.
- 6. Redevelopment Generally.
- 7. Urban Renewal Generally.
- 8. Acquisition of Property for Urban Renewal.
- 9. Participation in Federal Programs.
- 10. Surplus Federal Housing Facilities.
- 11. TARGETED NEIGHBORHOOD ENHANCEMENT PLAN ACT.

#### RESEARCH REFERENCES

ALR. Liability of urban redevelopment authority or other state or municipal agency or entity for injuries occurring in vacant or abandoned property owned by governmental entity. 7 ALR 4th 1129.

Law regulating conversion of rental housing to condominiums. 21 ALR 4th 1083.

Validity, construction, and application of state relocation assistance laws. 49 ALR 4th 491.

**Am. Jur.** 27 Am. Jur. 2d Em. Dom., § 942 et seq.

40 Am. Jur. 2d, Housing, § 1 et seq.

## SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

14-169-101. Definitions.

14-169-102. Powers supplemental.

14-169-103. Appointment and meetings of commissioners.

14-169-104. Exercise of powers in areas not included in area of operation.

SECTION

14-169-105. Aid and cooperation by public bodies.

14-169-106. Bonds as legal investments, etc.

Effective Dates. Acts 1943, No. 280, § 17: approved Mar. 23, 1943. Emergency clause provided: "Inasmuch as there is no statutory provision for the creation and establishment of consolidated housing authorities by two or more municipalities nor other provisions contained in this act that are necessary to make housing au-

thorities in this State more efficient and economical administrative units, it is necessary for the immediate preservation of the public peace, health and safety that this act become effective without delay. This act, therefore, shall take effect and be in full force from and after its passage."

## 14-169-101. Definitions.

As used in this act, unless the context otherwise requires:

(1) "Municipality" means any city, town, or other municipality in the state;

(2) "Bonds" means any bonds, notes, interim certificates, debentures, obligations, or other evidences of indebtedness issued by a housing authority:

(3) "Governing body" means, in the case of a municipality, the council or other legislative body, and in the case of a county, the county court or other legislative body;

(4) "Clerk" means the clerk or the officer with similar duties;

(5) "Housing Authorities Act" means §§ 14-169-201 — 14-169-205, 14-169-207 — 14-169-225, 14-169-227, 14-169-229 — 14-169-240, and 14-169-804:

(6) "Supplemental Housing Authorities Act" means §§ 14-169-223, 14-169-228, 14-169-237, 14-169-238, 14-169-302 — 14-169-313, 14-169-501 — 14-169-503, and this act.

History. Acts 1943, No. 280, § 14; 280, codified as §§ 14-169-101 — 14-169-A.S.A. 1947, § 19-3051. 106, 14-169-224, 14-169-226, 14-169-304, Meaning of "this act". Acts 1943, No. 14-169-319, 14-169-401.

## 14-169-102. Powers supplemental.

(a) The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law.

(b) Nothing contained in this act shall affect the term of office of any

commissioner of a housing authority heretofore appointed.

(c) The enactment of this act shall not be construed to render invalid any action or proceeding had or taken for the creation or establishment of a housing authority pursuant to laws in existence prior to the enactment of this act.

**History.** Acts 1943, No. 280, § 15; **Meaning of "this act".** See note to A.S.A. 1947, § 19-3052. § 14-169-101.

# 14-169-103. Appointment and meetings of commissioners.

Nothing contained in the Housing Authorities Act or the Supplemental Housing Authorities Act shall be construed to prevent meetings of the commissioners of a housing authority anywhere within the perimeter boundaries of the area of operation of the authority or within any additional area where the housing authority is authorized to undertake a housing project, or to prevent the appointment of any person as a commissioner of the authority who resides within such boundaries or additional area and who is otherwise eligible for appointment under these statutes.

**History.** Acts 1943, No. 280, § 10; A.S.A. 1947, § 19-3050.

# 14-169-104. Exercise of powers in areas not included in area of operation.

- (a)(1) In addition to its other powers, any housing authority created by or pursuant to the Housing Authorities Act or the Supplemental Housing Authorities Act may exercise any or all of its powers within the territorial boundaries of any municipality not included in the area of operation of the housing authority for the purpose of planning, undertaking, financing, constructing, and operating housing projects within the municipality, if a resolution shall have been adopted declaring that there is a need for the housing authority to exercise its powers within the municipality by:
  - (A) The governing body of the municipality in which the housing authority is to exercise its powers; and

(B) Any housing authority theretofore established by the municipality and authorized to exercise its powers in it.

(2) A municipality shall have the same powers to furnish financial and other assistance to the housing authority exercising its powers

within the municipality under this section as though the municipality

were within the area of operation of the authority.

(b)(1)(A) No governing body of a city or other municipality shall adopt a resolution under this section declaring that there is a need for a housing authority, other than a housing authority established by the municipality, to exercise its powers within the municipality, unless a public hearing has first been held by the governing body and unless the governing body shall have found, in substantially the following terms, that:

(i) Unsanitary or unsafe inhabited dwelling accommodations exist in the municipality or that there is a shortage of safe or sanitary dwelling accommodations in the municipality available to persons of

low income at rentals they can afford; and

(ii) These conditions can be best remedied through the exercise of the housing authority's powers within the territorial boundaries of

the municipality.

- (B) The findings shall not have the effect of establishing a housing authority for any municipality under § 14-169-207 nor of thereafter preventing the municipality from establishing a housing authority or joining in the creation of a consolidated housing authority or the increase of the area of operation of a consolidated housing authority. (2)(A) The clerk of the city or other municipality shall give notice of the time, place, and purpose of the public hearing at least ten (10) days prior to the date on which the hearing is to be held, in a newspaper published in the municipality. If there is no newspaper published in the municipality, then notice shall be published in a newspaper published in the state and having a general circulation in the municipality.
- (B) Upon the date fixed for the public hearing, an opportunity to be heard shall be granted to all residents of the municipality and to all other interested persons.
- (c) During the time that, pursuant to these findings, a housing authority has outstanding, or is under contract to issue, any evidences of indebtedness for a project within the city or other municipality, no other housing authority may undertake a project within the municipality without the consent of the housing authority which has the outstanding indebtedness or obligation.

**History.** Acts 1943, No. 280, § 9; A.S.A. 1947, § 19-3049.

# 14-169-105. Aid and cooperation by public bodies.

Any municipality, county, or other public body shall have the same rights and powers to aid and cooperate in the development or administration of any housing project of a housing authority established pursuant to the Supplemental Housing Authorities Act as such public body has, under any provisions of law, to aid or cooperate in the

development or administration of housing projects of a housing authority established pursuant to the Housing Authorities Act.

**History.** Acts 1943, No. 280, § 12; A.S.A. 1947, § 19-3047.

## 14-169-106. Bonds as legal investments, etc.

The bonds and other obligations issued by any housing authority established pursuant to the Supplemental Housing Authorities Act shall be legal investments, security for public deposits, and negotiable to the same extent and for the same persons, institutions, associations, corporations, public and private bodies, and officers as bonds or other obligations issued by a housing authority established pursuant to the Housing Authorities Act.

**History.** Acts 1943, No. 280, § 13; A.S.A. 1947, § 19-3048.

## SUBCHAPTER 2 — HOUSING AUTHORITIES IN CITIES AND COUNTIES

SECTION.	SECTION.
14-169-201. Title.	14-169-222. Powers in issuing bonds or
14-169-202. Legislative declarations.	incurring obligations.
14-169-203. Definitions.	14-169-223. Bonds and obligations as le-
14-169-204. Provisions controlling.	gal investments.
14-169-205. Planning, etc., laws applica-	14-169-224. Joining or cooperating by au-
ble.	thorities.
14-169-206. Validating provisions.	14-169-225. Federal aid or cooperation.
14-169-207. Creation of authorities.	14-169-226. Agreement to sell project as
14-169-208. Appointment, etc., of commissioners, employees.	security for federal obliga- tions.
14-169-209. Commissioner or employee interest prohibited.	14-169-227. Aid and cooperation by state public bodies.
14-169-210. Removal of commissioners.	14-169-228. Additional powers of public
14-169-211. Powers of authority gener-	bodies to aid or cooperate.
ally.	14-169-229. Public appropriations and
14-169-212. Investigations, studies, etc.	loans.
14-169-213. Examinations and investiga-	14-169-230. Authority to exercise powers.
tions — Conduct, oaths,	14-169-231. Contracts for services fur-
subpoenas, etc.	nished by public body.
14-169-214. Examinations and investiga-	14-169-232. Statutory remedies of obli-
tions — Findings and rec-	gee.
ommendations.	14-169-233. Additional remedies confer-
14-169-215. Powers of authority regard-	rable on obligees.
ing property generally.	14-169-234. Exemption of property from
14-169-216. Acquisition, operation, con-	execution.
struction, etc., of housing projects.	14-169-235. Tax exemption of certain property.
14-169-217. Contracts for services,	14-169-236. Fixing of rental rates.
works, etc.	14-169-237. Rentals and tenant selection.
14-169-218. Financing of project.	14-169-238. Right to possession, etc.
14-169-219. Power of eminent domain.	14-169-239. Security for funds deposited.
14-169-220. Authority to issue bonds.	14-169-240. Reports and recommenda-
14-169-221. Issuance of bonds.	tions.

Effective Dates. Acts 1937, No. 298, § 31: approved Mar. 23, 1937. Emergency clause provided: "It is determined and declared that unemployment and the existence of unsafe, insanitary and congested dwelling accommodations have produced an alarming economic condition in the State and constitute an emergency and that it is necessary for the preservation of the public peace, health and safety that this act become effective without delay. This act, therefore, shall take effect and be in full force from and after its passage."

Acts 1941, No. 352, § 13: approved Mar. 26, 1941. Emergency clause provided: "Inasmuch as there is no statutory provision for the creation and establishment of regional housing authorities to provide dwelling accommodations for persons of low income which are urgently needed by inhabitants of the State residing in unsafe and insanitary dwelling accommodations and there is no specific statutory provision authorizing county housing authorities and regional housing authorities to provide housing for farmers of low income, it is necessary for the immediate preservation of the public peace, health and safety that this act become effective without delay. This act, therefore, shall take effect and be in full force from and after its passage."

Acts 1943, No. 77, § 5: approved Feb. 19, 1943. Emergency clause provided: "An emergency is hereby declared to exist and this act shall be in force and effect from

and after its passage."

Acts 1943, No. 280, § 17: approved Mar. 23, 1943. Emergency clause provided: "Inasmuch as there is no statutory provision for the creation and establishment of consolidated housing authorities by two or more municipalities nor other provisions contained in this act that are necessary to make housing authorities in this State more efficient and economical administrative units, it is necessary for the immediate preservation of the public peace, health and safety that this act become effective without delay. This act, therefore, shall take effect and be in full force from and after its passage."

Acts 1961, No. 69, § 2: Feb. 9, 1961. Emergency clause provided: "Conditions of blight and deterioration in certain cities and towns of this State are such as to constitute hazards to the public peace,

health and welfare. These conditions should be promptly corrected through the provisions of this Act. An emergency is therefore declared to exist and this Act shall become effective immediately upon

its passage and approval."

Acts 1970 (Ex. Sess.), No. 44, § 4: Mar. 13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1975, No. 225, § 26: became law without Governor's signature, Feb. 19, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1977, No. 278, § 3: Feb. 28, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is no established procedure for participation by the aggregate governing body of a municipality or county in the dismissal of housing commissioners; and that this has resulted in some arbitrary actions in the past. Therefore, an emergency is hereby declared to exist and this Act being necessary for the

immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage

and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1988 (3rd Ex. Sess.), No. 3, § 3: Feb. 5, 1988. Emergency clause provided: "It has been found and it is hereby declared that Arkansas housing authorities are required to sell their revenue bonds at public sale (rather than negotiation), while other agencies of municipalities are not so required, that the issuance of revenue bonds by housing authorities is subject to the approval of the elected governing bodies of the respective municipalities and counties (following public notice), that the requirement of public sale is a cause of delay in the completion of necessary and urgent financings. Therefore, an emer-

gency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect upon its passage and approval."

Acts 1989, Nos. 504 and 630, § 4: approved Mar. 13, 1989 and Mar. 17, 1989, respectively. Emergency clause provided: "It is hereby found and determined by the General Assembly that confusion exists regarding whether the commissioners of a housing authority are to appoint their successors; that it has been the practice for 51 years that the commissioners appoint their successors and that was the intent of the General Assembly when it enacted the Housing Authorities Act; that in order to meet federal requirements the housing authorities must be autonomous bodies; that since housing authorities contract with local governments the local governments should not be appointing the members to the housing authorities; that this Act clarifies the law by specifically indicating that the commissioners of housing authorities designate their successors upon the expiration of their terms of office or when necessary to fill vacancies; and that this Act should be given effect immediately in order to clarify the law as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

#### RESEARCH REFERENCES

ALR. Ordinance establishing rent control benefit or rent subsidy for elderly tenants. 5 ALR 4th 922.

Ark. L. Rev. Comment, Municipal Bonds and Amendment 62: Clearing Up a Serbonian Bog, 39 Ark. L. Rev. 499.

#### **CASE NOTES**

#### ANALYSIS

Constitutionality.

- -Delegation of legislative authority.
- —Discrimination.
- —Special privileges.

Separability.

### Constitutionality.

—Delegation of Legislative Authority.

This subchapter is not unconstitutional for delegating legislative authority; the most it does is to delegate power to the agency or authority to determine facts conditioning the operation of the law. Hogue v. Housing Auth., 201 Ark. 263, 144 S.W.2d 49 (1940).

#### -Discrimination.

This subchapter is not discriminatory against private owners of dwelling accommodations and does not take their property for public purposes or uses without due process of law and without a just compensation therefor. Hogue v. Housing Auth., 201 Ark. 263, 144 S.W.2d 49 (1940).

Evidence that out of 76 parcels of land comprising proposed housing project white people owned 40 and negroes owned 36 and both white and negro families lived in the area and that housing authority proposed separate projects for negroes and whites was held not to show illegal discrimination against negroes on account of their race in violation of their constitutional rights. Denard v. Housing Auth., 203 Ark. 1050, 159 S.W.2d 764 (1942).

### -Special Privileges.

This subchapter was held not unconsti-

tutional for granting special privileges to certain citizens or class of citizens. Hogue v. Housing Auth., 201 Ark. 263, 144 S.W.2d 49 (1940).

### Separability.

Invalid provisions of this subchapter may be stricken down without invalidating the whole subchapter. Hogue v. Housing Auth., 201-Ark. 263, 144 S.W.2d 49 (1940).

Cited: Housing Auth. v. Winston, 226 Ark. 1037, 295 S.W.2d 621 (1956); L.C. Eddy, Inc. v. City of Arkadelphia, 303 F.2d 473 (8th Cir. 1962); Housing Auth. v. Sparks, 234 Ark. 868, 355 S.W.2d 166 (1962); Arkansas La. Gas Co. v. City of Little Rock, 256 Ark. 112, 506 S.W.2d 555 (1974); Fulmer v. Holcomb, 261 Ark. 580, 550 S.W.2d 442 (1977); Confederated Hous. Assocs. v. Department of HUD, 538 F. Supp. 1158 (E.D. Ark. 1982); Clients' Council v. Pierce, 711 F.2d 1406 (8th Cir. 1983).

## 14-169-201. Title.

This subchapter may be referred to as the "Housing Authorities Act."

**History.** Acts 1937, No. 298, § 1; Pope's Dig., § 10059; A.S.A. 1947, § 19-3001.

## 14-169-202. Legislative declarations.

It is declared that:

(1) There exist in the state insanitary or unsafe dwelling accommodations and that persons of low income are forced to reside in insanitary or unsafe accommodations; within the state there is a shortage of safe or sanitary dwelling accommodations available at rents which persons of low income can afford, and that those persons are forced to occupy overcrowded and congested dwelling accommodations; these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals, and welfare of the residents of the state and impair economic values; these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities;

(2) Slum areas in the state cannot be cleared, nor can the shortage of safe and sanitary dwellings for persons of low income be relieved, through the operation of private enterprise, and that the construction of

housing projects for persons of low income, as defined in § 14-169-203, would therefore not be competitive with private enterprise;

(3) The clearance, replanning, and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are exclusively public uses and purposes for which public money may be spent and private property acquired and are governmental functions of state concern;

(4) It is a proper public purpose for any state public body to aid, as provided in this subchapter, any housing authority operating within its boundaries or jurisdiction or any housing project located therein, as the state public body derives immediate benefits and advantages from such an authority or project;

(5) It is in the public interest that work on housing projects be commenced as soon as possible in order to relieve unemployment which

constitutes an emergency; and

(6) The necessity in the public interest for the provisions enacted in this subchapter is declared as a matter of legislative determination.

**History.** Acts 1937, No. 298, § 2; Pope's Dig., § 10060; A.S.A. 1947, § 19-3002.

#### **CASE NOTES**

ANALYSIS

Constitutionality.
Purpose.
Statewide concern.

Constitutionality.

This subchapter was held not void for not limiting the location of its projects to slum areas. Hogue v. Housing Auth., 201 Ark. 263, 144 S.W.2d 49 (1940).

Purpose.

The primary purpose or intent of this subchapter is slum clearance by removing the evils existing therein and emanating therefrom which are a great detriment to the public welfare of citizens generally and in the attempted prevention of which private agencies cannot successfully cope. Hogue v. Housing Auth., 201 Ark. 263, 144 S.W.2d 49 (1940).

This subchapter creates a public agency for the performance of a public purpose, and insofar as it permits or requires the expenditure of public funds by the state or by municipalities, the expenditures are for public use in the promotion of proper governmental functions. Hogue v. Housing Auth., 201 Ark. 263, 144 S.W.2d 49 (1940).

#### Statewide Concern.

This section defines the concern of this subchapter as statewide rather than municipal, and thus is not governed by § 14-43-601 et seq. City of Ft. Smith v. Housing Auth., 256 Ark. 254, 506 S.W.2d 534 (1974).

Cited: Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1, 778 F.2d 404 (8th Cir. 1985).

## 14-169-203. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Authority" or "housing authority" means any of the public

corporations created by § 14-169-207;

(2) "City" means any city of the first or second class or any incorporated town. "The city" means the particular city or town for which a particular housing authority is created;

(3) "County" means any county in the state. "The county" means the particular county for which a particular housing authority is created;

(4) "State public body" means any city, town, county, municipal corporation, commission, district, authority, other subdivision, or other public body of the state:

(5) "Governing body" means:

(A) In the case of a city, the city council or other legislative body thereof:

(B) In the case of a county, the county court or other legislative body thereof: and

(C) In the case of other state public bodies, the council, commissioners, board, or other body having charge of the fiscal affairs of the

state public body: (6) "Mayor" means the mayor of the city or the officer thereof charged with the duties customarily imposed on the mayor or executive head of

the city:

(7) "Clerk" means the clerk of the city or the clerk of the county, as the case may be, or the officer of the city or the county, charged with the duties customarily imposed on the clerk;

(8) "Area of operation" means:

(A) In the case of a housing authority of a city having a population of less than ten thousand (10,000), the city and the area within five (5) miles of its territorial boundaries:

(B) In the case of a housing authority of a city having a population of ten thousand (10,000) or more, the city and the area within fifteen

(15) miles of its territorial boundaries.

However, the area of operation of a housing authority of any city shall not include any area which lies within the territorial boundaries of some other city as defined in this section; and

(C) In the case of a housing authority of a county, all of the county except that portion which lies within the territorial boundaries of any

city as defined in this section;

(9) "Federal government" means the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America:

(10) "Slum" means any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light, or sanitary facilities, or any combination of these factors, are detrimental to safety, health, and morals;

(11)(A) "Housing project" means any work or undertaking to:

(i) Demolish, clear, or remove buildings from any slum area. The work or undertaking may embrace the adaptation of the area to public purposes including parks or other recreational or community

purposes;

(ii) Provide decent, safe, and sanitary urban or rural dwellings, apartments, or other living accommodations for persons of low income. The work or undertaking may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare, or other purposes; or

(iii) Accomplish a combination of the foregoing.

(B) The term "housing project" also may be applied to:(i) The planning of the buildings and improvements;

(ii) The acquisition of property;

(iii) The demolition of existing structures;

(iv) The construction, reconstruction, alteration, and repair of the improvements; and

(v) All other work in connection therewith:

(12) "Persons of low income" means persons or families who lack the amount of income which is necessary, as determined by the authority undertaking the housing project, to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding;

(13) "Bonds" means any bonds, notes, interim certificates, debentures, or other obligations issued by an authority pursuant to this

subchapter;

- (14) "Real property" means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto or used in connection therewith, and every estate, interest, and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage, or otherwise, and the indebtedness secured by such liens;
- (15) "Obligee of the authority" or "obligee" means any bondholder, trustee for any bondholder, or lessor demising to the authority property used in connection with a housing project, or any assignee of the lessor's interest or any part thereof, and the federal government when it is a party to any contract with the authority.

**History.** Acts 1937, No. 298, § 3; Pope's Dig., § 10061; Acts 1961, No. 69, § 1; A.S.A. 1947, § 19-3003; Acts 1997, No. 981, § 1.

Amendments. The 1997 amendment substituted "within fifteen (15) miles" for "within ten (10) miles" in (8)(B).

#### CASE NOTES

Cited: Fagan Elec. Co. v. Housing Auth., 216 Ark. 932, 228 S.W.2d 39 (1950).

## 14-169-204. Provisions controlling.

Insofar as the provisions of this subchapter are inconsistent with the provisions of any other law, the provisions of this subchapter shall be controlling.

**History.** Acts 1937, No. 298, § 30; Pope's Dig., § 10088; A.S.A. 1947, § 19-3034.

## 14-169-205. Planning, etc., laws applicable.

(a) All housing projects of a housing authority shall be subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which the housing project is situated.

(b) In the planning and location of any housing project, an authority shall take into consideration the relationship of the project to any larger plan or long-range program for the development of the area in which the authority functions.

**History.** Acts 1937, No. 298, § 13; Pope's Dig., § 10071; A.S.A. 1947, § 19-3016.

Cross References. Building and zoning regulations, § 14-56-201.

#### CASE NOTES

#### Judicial Review.

The courts have the power to review the action of municipal authorities in the classification of property for zoning purposes and may set aside an unreasonable and

arbitrary restriction imposed when the proposed use of the property will be beneficial and not harmful, to the surrounding property. City of Little Rock v. Joyner, 212 Ark. 508, 206 S.W.2d 446 (1947).

## 14-169-206. Validating provisions.

(a) The establishment and organization of housing authorities pursuant to the provisions of this subchapter, together with all proceedings, acts, and things heretofore undertaken, performed, or done with reference thereto, are validated, ratified, confirmed, approved, and declared legal in all respects, notwithstanding any defect or irregularity

in them or any want of statutory authority.

(b) All contracts, agreements, obligations, and undertakings of housing authorities heretofore entered into relating to financing or aiding in the development, construction, maintenance, or operation of any housing projects or to obtaining aid for them from the United States. This shall include, without limiting the generality of the foregoing, loan and annual contributions contracts, leases with the United States, agreements with municipalities, counties, or other public bodies, including agreements which are pledged or authorized to be pledged for the protection of the holders of any notes or bonds issued by authorities or which are otherwise made a part of the contract with the holders of notes or bonds, relating to cooperation and contributions in aid of projects, payments, if any, in lieu of taxes, furnishing of services and

facilities, and the elimination of unsafe and insanitary dwellings. Contracts for the construction of projects, together with all proceedings, acts, and things heretofore undertaken, performed, or done with reference to them are validated, ratified, confirmed, approved, and declared legal in all respects, notwithstanding any defect or irregularity in them or any want of statutory authority.

(c) All proceedings, acts, and things heretofore undertaken, performed, or done in or for the authorization, issuance, sale, execution, and delivery of notes and bonds by housing authorities for the purpose of financing or aiding in the development or construction of housing projects, and all notes and bonds heretofore issued by authorities, are validated, ratified, confirmed, approved, and declared legal in all respects, notwithstanding any defect or irregularity in them or any want of statutory authority.

**History.** Acts 1941, No. 410, §§ 1-3; A.S.A. 1947, §§ 19-3035 — 19-3037.

### 14-169-207. Creation of authorities.

(a)(1) In each city and in each county of the state there is created a public body corporate and politic to be known as the "housing authority" of the city or county.

(2)(A) An authority shall not transact any business or exercise its powers under this subchapter until or unless the governing body of the city or the county, as the case may be, by proper resolution shall declare at any time that there is need for an authority to function in the city or county.

(B) The determination as to whether there is a need for an

authority to function:

(i) May be made by the governing body on its own motion; or

- (ii) Shall be made by the governing body upon the filing of a petition signed by twenty-five (25) residents of the city or the county, as the case may be, asserting that there is need for an authority to function in the city or county and requesting that the governing body so declare.
- (b)(1) The governing body shall adopt a resolution declaring that there is need for a housing authority in the city or county, as the case may be, if it shall find that:

(A) Insanitary or unsafe inhabited dwelling accommodations exist

in the city or county; or

(B) There is a shortage of safe or sanitary dwelling accommodations in the city or county available to persons of low income at rentals they can afford.

(2) In determining whether dwelling accommodations are unsafe or insanitary, the governing body may take into consideration:

(A) The degree of overcrowding;

(B) The percentage of land coverage;

(C) The light, air, space, and access available to the inhabitants of the dwelling accommodations;

(D) The size and arrangement of the rooms;

(E) The sanitary facilities; and

(F) The extent to which conditions exist in the buildings which

endanger life or property by fire or other causes.

(c)(1) In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract of the authority, the authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers under this subchapter upon proof of the adoption of a resolution by the governing body declaring the need for the authority.

(2)(A) A resolution shall be deemed sufficient if it declares that there is need for an authority and finds in substantially the foregoing terms, with no further detail being necessary, that either or both of the enumerated conditions exist in the city or county, as the case may

be.

(B) A copy of the resolution, duly certified by the clerk, shall be admissible in evidence in any suit, action, or proceeding.

**History.** Acts 1937, No. 298, § 4; Pope's Dig., § 10062; A.S.A. 1947, § 19-3004.

#### CASE NOTES

ANALYSIS

Constitutionality. Agency. Dissolution.

Constitutionality.

This section is not unconstitutional as not serving public purposes. Kerr v. East Cent. Ark. Regional Hous. Auth., 208 Ark. 625, 187 S.W.2d 189 (1945).

Agency.

Housing authorities created under this section are not agents of the local governing body. Arkansas La. Gas Co. v. City of Little Rock, 256 Ark. 112, 506 S.W.2d 555 (1974).

#### Dissolution.

The power to create a corporation is a legislative function and its dissolution is likewise primarily a legislative function; thus an initiative ordinance to dissolve a housing authority created under this section is authorized by Ark. Const. Amend. 7. Cochran v. Black, 240 Ark. 393, 400 S.W.2d 280 (1966).

Cited: Fagan Elec. Co. v. Housing Auth., 216 Ark. 932, 228 S.W.2d 39 (1950); Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1, 778 F.2d 404 (8th Cir. 1985).

## 14-169-208. Appointment, etc., of commissioners, employees.

(a)(1) When the governing body of a city adopts a resolution as prescribed in § 14-169-207, it shall promptly notify the mayor of the adoption.

(2)(A) Upon receiving the notice, the mayor shall appoint five (5) persons as commissioners of the housing authority created for the

city.

(B) When the governing body of a county adopts a resolution as indicated, the governing body shall appoint five (5) persons as commissioners of the authority created for the county.

(b) No commissioner of an authority may be an officer or employee of

the city or county for which the authority is created.

(c)(1) The commissioners who are first appointed shall be designated to serve for terms of one (1), two (2), three (3), four (4), and five (5) years, respectively, from the date of their appointment.

(2)(A) Thereafter, commissioners shall be appointed as prescribed for a term of office of five (5) years. However, all vacancies shall be filled

for the unexpired term.

(B)(i) When the term of office of a commissioner expires or other vacancy occurs in the commissioners of an authority, the commissioners shall appoint a successor to fill the vacancy, subject to confirmation by the municipal or county governing body.

(ii) If the commissioners fail to appoint a successor within forty-five (45) calendar days from the date a commissioner's term expires or other vacancy occurs, the governing body shall appoint a successor.

(C)(i) If the governing body fails to confirm or reject the commissioner's appointment within forty-five (45) calendar days after receiving written notice of the appointment, the appointment shall be deemed confirmed and the governing body shall have no power to act on the appointment thereafter.

(ii) If the governing body rejects such appointment within forty-five (45) calendar days after receiving written notice of the appointment, the commissioners shall within thirty (30) calendar days after receiving written notice of such rejection appoint another person to

fill the vacancy.

(iii) If the commissioners fail to make the appointment within the thirty-day period, the governing body shall appoint a successor.

(3) A commissioner shall hold office until his successor has been

appointed and has qualified.

(d)(1) A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the governing body.

(2) The certificate shall be conclusive evidence of the due and proper

appointment of the commissioner.

(e) A commissioner may receive reasonable compensation for his services, not to exceed three hundred dollars (\$300) per year. He shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties.

(f) The powers of each authority shall be vested in their commission-

ers in office from time to time.

(g)(1) Three (3) commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes.

(2) Action may be taken by the authority upon a vote of a majority of the commissioners present, except as provided in this subchapter and

except as otherwise provided in the bylaws of the authority.

(h)(1) The mayor, or in the case of an authority for a county, the governing body of the county, shall designate which of the commissioners appointed shall be the first chairman.

(2) When the office of the chairman of the authority thereafter becomes vacant, the authority shall select a chairman from among its

commissioners.

(i)(1) An authority shall select from among its commissioners a vice chairman. It may also employ a secretary, who shall be executive director, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation.

(2) For such legal services as it may require, an authority may call upon the chief law officer of the city or the county or may employ its own

counsel and legal staff.

(3) An authority may delegate to one (1) or more of its agents or employees such powers or duties as it may deem proper.

**History.** Acts 1937, No. 298, § 5; §§ 19-3005 — 19-3008; Acts 1989, No. Pope's Dig., § 10063; Acts 1943, No. 77, 504, § 1; 1989, No. 630, § 1. §§ 1-3; 1981, No. 543, § 1; A.S.A. 1947,

# 14-169-209. Commissioner or employee interest prohibited.

(a) No commissioner or employee of a housing authority shall acquire any interest, direct or indirect, in any housing project or in any property included or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project.

(b)(1) If any commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any housing project, he immediately shall disclose it, in writing, to the authority. The disclosure shall be entered

upon the minutes of the authority.

(2) Failure so to disclose an interest shall constitute misconduct in office.

**History.** Acts 1937, No. 298, § 6; Pope's Dig., § 10064; A.S.A. 1947, § 19-3009.

## 14-169-210. Removal of commissioners.

(a) A commissioner of a city or county housing authority may be removed from office for inefficiency or neglect of duty or misconduct in office only by the vote of the majority of the city council or county quorum court, as the case may be.

(b) Removal shall occur only after the commissioner has been given a copy of the charges, at least ten (10) days prior to the hearing on the charges, and the commissioner has had an opportunity to be heard in

person or by counsel.

(c) In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings on them, shall be filed in the office of the clerk

**History.** Acts 1937, No. 298, § 7; Pope's Dig., § 10065; Acts 1977, No. 278, § 1; A.S.A. 1947, § 19-3010.

#### **CASE NOTES**

ANALYSIS

Criteria. Order of removal.

#### Criteria.

A removal for inefficiency and neglect of duty must be for matters relating to and affecting the proper administration of the office and of a substantial nature affecting the rights of the public. Fulmer v. Holcomb, 261 Ark. 580, 550 S.W.2d 442 (1977).

#### Order of Removal.

Where there was a failure of proof on one of the specifications of an order for the removal of several housing authority commissioners, the order of removal had to be quashed, since such an order must be quashed if it does not specify the particular charges upon which the removal is based and there is any doubt about the sufficiency of the evidence to sustain any of the grounds charged. Fulmer v. Holcomb, 261 Ark. 580, 550 S.W.2d 442 (1977).

# 14-169-211. Powers of authority generally.

A housing authority shall constitute a public body corporate and politic, exercising exclusively public and essential governmental functions and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this subchapter, including the following powers in addition to others granted in this subchapter:

- (1) To sue and be sued;
- (2) To have a seal and to alter the same at pleasure;
- (3) To have perpetual succession;

(4) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and

(5) To make and from time to time amend and repeal bylaws, rules, and regulations not inconsistent with this subchapter to carry into effect the powers and purposes of the authority;

(6) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; and

(7) To purchase its bonds at a price not more than the principal amount thereof and accrued interest, all bonds so purchased to be cancelled;

(8) To exercise all or any part or combination of the powers granted in this section and §§ 14-169-212 — 14-169-218 and 14-169-225(b).

**History.** Acts 1937, No. 298, § 8; Pope's Dig., § 10066; Acts 1971, No. 294, § 2; A.S.A. 1947, § 19-3011.

#### CASE NOTES

Cited: Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1, 778 F.2d 404 (8th Cir. 1985).

## 14-169-212. Investigations, studies, etc.

A housing authority shall have the power, within its area of operation:

(1) To investigate into living, dwelling, and housing conditions and

into the means and methods of improving these conditions;

- (2) To determine where slum areas exist or where there is a shortage of decent, safe, and sanitary dwelling accommodations for persons of low income:
  - (3)(A) To make studies and recommendations relating to the problem of clearing, replanning, and reconstructing of slum areas and the problem of providing dwelling accommodations for persons of low income; and
  - (B) To cooperate with the city, the county, and the state, or any political subdivision therof, in action taken in connection with these problems; and
- (4) To engage in research, studies, and experimentation on the subject of housing.

**History.** Acts 1937, No. 298, § 8; Pope's Dig., § 10066; A.S.A. 1947, § 19-3011.

#### CASE NOTES

Cited: Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1, 778 F.2d 404 (8th Cir. 1985).

# 14-169-213. Examinations and investigations — Conduct, oaths, subpoenas, etc.

A housing authority shall have the power, acting through one (1) or more commissioners or other persons designated by the authority:

- (1) To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information;
  - (2) To administer oaths:

(3) To issue subpoenas requiring the attendance of witnesses or the

production of books and papers; and

(4) To issue commissions for the examination of witnesses who are outside of this state or unable to attend before the authority or excused from attendance.

**History.** Acts 1937, No. 298, § 8; Pope's Dig., § 10066; A.S.A. 1947, § 19-3011.

#### **CASE NOTES**

Cited: Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1, 778 F.2d 404 (8th Cir. 1985).

# 14-169-214. Examinations and investigations — Findings and recommendations.

A housing authority shall have the power to make available to appropriate agencies, including those charged with the duty of abating or requiring the correction of nuisances or like conditions or of demolishing unsafe or insanitary structures within its area of operation, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety, or welfare.

**History.** Acts 1937, No. 298, § 8; Pope's Dig., § 10066; A.S.A. 1947, § 19-3011.

#### **CASE NOTES**

Cited: Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1, 778 F.2d 404 (8th Cir. 1985).

# 14-169-215. Powers of authority regarding property generally.

A housing authority shall have the power:

(1) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project and, subject to the limitations contained in this subchapter, to establish and revise the rents or charges for them:

(2) To own, hold, and improve real or personal property;

(3) To purchase, lease, obtain options upon, or acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest in it;

(4) To acquire by the exercise of the power of eminent domain any real property;

(5) To sell, lease, exchange, transfer, assign, pledge, or dispose of any

real or personal property or any interest in it; and

(6) To insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards.

**History.** Acts 1937, No. 298, § 8; Pope's Dig., § 10066; A.S.A. 1947, § 19-3011.

#### CASE NOTES

Cited: Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1, 778 F.2d 404 (8th Cir. 1985).

# 14-169-216. Acquisition, operation, construction, etc., of housing projects.

(a) A housing authority shall have the power within its area of operation to prepare, carry out, acquire, lease, and operate housing projects, and to provide for the construction, reconstruction, improvement, alteration, or repair of any housing project or any part thereof.

(b) No provisions of law with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to an authority unless the General Assembly shall specifically so state.

**History.** Acts 1937, No. 298, § 8; Pope's Dig., § 10066; A.S.A. 1947, § 19-3011.

Publisher's Notes. As to administration of national defense housing projects

developed during World War II, see Acts 1941, No. 323; Acts 1943, No. 270.

#### CASE NOTES

Cited: Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1, 778 F.2d 404 (8th Cir. 1985).

# 14-169-217. Contracts for services, works, etc.

(a) A housing authority shall have the power to arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works or facilities for, or in connection with, a housing

project or the occupants thereof.

(b) Notwithstanding anything to the contrary contained in this subchapter or in any other provision of law, a housing authority shall have the power to include, in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor and with any conditions which the federal government may have attached to its financial aid of the project.

**History.** Acts 1937, No. 298, § 8; Pope's Dig., § 10066; A.S.A. 1947, § 19-3011.

#### **CASE NOTES**

#### Bidding.

A housing authority is not governed by \$ 22-9-203 regarding bidding on contracts because it is not an agency of the state nor a local taxing unit. Fagan Elec. Co. v.

Housing Auth., 216 Ark. 932, 228 S.W.2d 39 (1950).

Cited: Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1, 778 F.2d 404 (8th Cir. 1985).

## 14-169-218. Financing of project.

A housing authority shall have the power to:

(1) Purchase promissory notes, and the mortgages or trust deeds securing them, issued by any builder or developer engaged in constructing dwelling units to be sold or leased to the authority as part of any housing project;

(2) Make loans to any such builder or developer in order to aid in

financing any housing project; and

(3) Issue its bonds for any such purpose.

**History.** Acts 1937, No. 298, § 8; Pope's Dig., § 10066; Acts 1971, No. 294, § 1; A.S.A. 1947, § 19-3011.

#### CASE NOTES

Cited: Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1, 778 F.2d 404 (8th Cir. 1985).

### 14-169-219. Power of eminent domain.

(a) A housing authority shall have the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for its purposes under this subchapter after the adoption by it of a resolution declaring that the acquisition of the real property described in it is necessary for those purposes.

(b) An authority may exercise the power of eminent domain in the manner prescribed in §§ 18-15-1202 — 18-15-1207 for condemnation by railroad corporations in this state, or it may exercise the power of eminent domain in the manner provided by any other applicable statutory provisions for the exercise of the power of eminent domain.

(c) Property already devoted to a public use may be acquired in like manner. However, no real property belonging to the city, the county, the state, or any political subdivision thereof may be acquired without its consent.

**History.** Acts 1937, No. 298, § 12; Pope's Dig., § 10070; A.S.A. 1947, § 19-3015.

**Publisher's Notes.** Acts 1937, No. 298, § 12, is also codified as § 18-15-1504.

Cross References. Eminent domain by federal government for housing projects, § 18-15-1501 et seq.

#### **CASE NOTES**

#### Constitutionality.

This subchapter is not unconstitutional for empowering the authority to exercise eminent domain in acquiring property for public purposes with which to construct and operate housing project. Hogue v.

Housing Auth, 201 Ark. 263, 144 S.W.2d 49 (1940).

Cited: L.C. Eddy, Inc. v. City of Arkadelphia, 303 F.2d 473 (8th Cir. 1962); Housing Auth. v. Rochelle, 249 Ark. 524, 459 S.W.2d 794 (1970).

## 14-169-220. Authority to issue bonds.

(a)(1)(A) A housing authority shall have power to issue bonds, from time to time, in its discretion, for any of its corporate purposes.

(B) An authority shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it.

(2)(A) An authority may issue such types of bonds as it may determine, including bonds on which the principal and interest are pavable:

(i) Exclusively from the income and revenues of the housing project financed from the proceeds of the bonds, or with such proceeds together with a grant from the federal government in aid of the project;

(ii) Exclusively from the income and revenues of certain designated housing projects, whether or not they were financed in whole or

in part with the proceeds of the bonds;

(iii) From any funds received from the United States of America, or any agency thereof, pursuant to any act of Congress providing for grants or payments to housing authorities in connection with, or in anywise pertaining to, the achieving and maintaining of housing projects;

(iv) From the funds set forth in subdivision (a)(2)(A)(iii) of this section together with any or all of the revenues set forth in subdivi-

sions (a)(2)(A)(i) and (ii) of this section; or

(v) From its revenues generally.

(B) Bonds may be additionally secured by a pledge of any revenues or a mortgage of any housing project or other property of the authority.

(b)(1) Neither the commissioners of an authority nor any person executing the bonds shall be liable personally on the bonds by reason of

their issuance.

(2)(A) The bonds and other obligations of an authority, which bonds and obligations shall so state on their face, shall not be a debt of the city, the county, or the state, or any political subdivision thereof. Neither the city, the county, the state, nor any political subdivision thereof shall be liable on them; nor, in any event, shall the bonds or obligations be payable out of any funds or properties other than those of the housing authority.

(B) The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restric-

tion.

History. Acts 1937, No. 298, § 14; Pope's Dig., § 10072; Acts 1971, No. 294, § 3; A.S.A. 1947, § 19-3017.

Cross References. Community rede-

velopment financing, § 14-168-201 et seq. Form of bonds, § 19-9-101.

Local Government Bond Act of 1985, § 14-164-301 et seq.

#### RESEARCH REFERENCES

Ark. L. Rev. Municipal Improvement Bonds in Arkansas, 8 Ark. L. Rev. 146.

#### **CASE NOTES**

Cited: L.C. Eddy, Inc. v. City of Special Sch. Dist. No. 1, 778 F.2d 404 (8th Arkadelphia, 303 F.2d 473 (8th Cir. 1962); Cir. 1985). Little Rock Sch. Dist. v. Pulaski County

### 14-169-221. Issuance of bonds.

(a)(1) Bonds of a housing authority shall be authorized by its

resolution upon a vote of at least three (3) commissioners.

(2) Bonds may be issued in one (1) or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be sold in such manner and on such terms, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, as the resolution, its trust indenture, or mortgage may provide.

(b) In case any of the commissioners or officers of the authority whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of the bonds, their signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the commissioners or officers had remained in office until the

delivery.

(c) Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this subchapter, subject to the provisions of this section with regard to registration, shall be fully negotiable.

(d) In any suit, action, or proceeding involving the validity or enforceability of any bond of an authority or the security therefor, any bond reciting, in substance, that it has been issued by the authority to aid in financing a housing project to provide dwelling accommodations for persons of low income shall be conclusively deemed to have been issued for a housing project of such character. The project shall be conclusively deemed to have been planned, located, and constructed in accordance with the purposes and provisions of this subchapter.

**History.** Acts 1937, No. 298, § 15; 1975, No. 225, § 15; 1981, No. 425, § 15; Pope's Dig., § 10073; Acts 1970 (Ex. A.S.A. 1947, § 19-3018; Acts 1988 (3rd Sess.), No. 44, § 1; 1971, No. 294, § 4; Ex. Sess.), No. 3, § 1.

## 14-169-222. Powers in issuing bonds or incurring obligations.

In connection with the issuance of bonds or the incurring of obligations under leases and in order to secure the payment of the bonds or obligations, a housing authority, in addition to its other powers, shall have power to:

(1) Pledge all or any part of its gross or net rents, fees, or revenues to which its right then exists or may thereafter come into existence;

(2) Mortgage all or any part of its real or personal property then

owned or thereafter acquired;

- (3)(A) Covenant against pledging all or any part of its rents, fees, and revenues or against mortgaging all, or any part, of its real or personal property to which its right or title then exists or may thereafter come into existence, or against permitting or suffering any lien on such revenues or property;
- (B) Covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any housing project, or any part thereof; and

(C) Covenant as to what other or additional debts or obligations

may be incurred by it;

(4)(A) Covenant as to the bonds to be issued and as to the issuance of the bonds, in escrow or otherwise, and as to the use and disposition of the proceeds thereof;

(B) Provide for the replacement of lost, destroyed, or mutilated

bonds;

(C) Covenant against extending the time for the payment of its bonds, or interest thereon; and

(D)(i) Redeem the bonds;

(ii) Covenant for their redemption; and

(iii) Provide the terms and conditions of redemptions;

- (5)(A) Covenant, subject to the limitations contained in this subchapter, as to:
- (i) The rents and fees to be charged in the operation of a housing project;
- (ii) The amount to be raised each year or other period of time by rents, fees, and other revenues; and

(iii) The use and disposition to be made of them; and

(B)(i) Create or authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves, or other purposes; and

(ii) Covenant as to the use and disposition of the moneys held in

these funds;

- (6)(A) Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated;
- (B) The amount of bonds the holders of which must consent thereto; and

(C) The manner in which the consent may be given;

(7)(A) Covenant as to the use of any, or all, of its real or personal property; and

(B) Covenant as to:

(i) The maintenance of its real and personal property;

(ii) The replacement of its property;

(iii) The insurance to be carried on its property; and

(iv) The use and disposition of insurance moneys;

(8)(A) Covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation; and

(B) Covenant and prescribe as to:

(i) The events of default and terms and conditions upon which any, or all, of its bonds or obligations shall become, or may be declared due before maturity; and

(ii) The terms and conditions upon which the declaration and its

consequences may be waived;

(9)(A) Vest in trustees or the holders of bonds, or any proportion of them, the right to enforce the payment of the bonds or any covenants securing or relating to the bonds;

(B) Vest in trustees the right, in the event of a default by the

authority, to:

(i) Take possession and use, operate, and manage any housing project, or part thereof;

(ii) Collect the rents and revenues arising from it; and

(iii) Dispose of the moneys in accordance with the agreement of the authority with the trustees;

(C)(i) Provide for the powers and duties of trustees; and

(ii) Limit the liabilities of trustees; and

(D) Provide the terms and conditions upon which the trustees or the holders of bonds, or any proportion of them, may enforce any covenant or rights securing or relating to the bonds; and

(10)(A) Exercise all, or any part or combination of, the powers granted in this section:

(B) Make covenants other than, and in addition to, the covenants expressly authorized in this section, of like or different character;

(C)(i) Make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds; or

(ii) In the absolute discretion of the authority, act to make the bonds more marketable, notwithstanding that such covenants, acts, or things may not be enumerated in this section.

**History.** Acts 1937, No. 298, § 16; Pope's Dig., § 10074; A.S.A. 1947, § 19-3019.

## 14-169-223. Bonds and obligations as legal investments.

(a)(1) The state and all public officers, municipal corporations, political subdivisions, and public bodies; and all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business; and all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a housing authority pursuant to this subchapter or issued by any public housing authority or agency in the United States, when the bonds or other obligations are secured by a pledge of annual contributions to be paid by the federal government, or any of its agencies.

(2) These bonds and other obligations shall be authorized security for

all public deposits and shall be fully negotiable in this state.

(b) It is the purpose of this section to authorize any persons, firms, corporations, associations, political subdivisions, bodies, and officers, public or private, to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension, and trust funds, and funds held on deposit, for the purchase of any such bonds or other obligations and to declare that any such bonds or other obligations shall be authorized security for all public deposits and shall be fully negotiable in this state.

(c) Nothing contained in this section shall be construed as relieving any person, firm, or corporation from any duty of exercising reasonable

care in selecting securities.

**History.** Acts 1937, No. 298, § 22; Pope's Dig., § 10080; Acts 1941, No. 352, § 2; A.S.A. 1947, § 19-3026.

## 14-169-224. Joining or cooperating by authorities.

(a) Any two (2) or more housing authorities created pursuant to this subchapter may join or cooperate with one another in the exercise, either jointly or otherwise, of any or all of their powers for the purpose of financing, including the issuance of bonds, notes, or other obligations and giving security therefor, planning, undertaking, owning, constructing, operating, or contracting with respect to housing projects located within the area of operation of any one (1) or more of the authorities.

(b) For such purpose, any authority may, by resolution, prescribe and authorize any other housing authority joining or cooperating with it to

act on its behalf with respect to any or all of its powers.

(c) Any authorities joining or cooperating with one another may, by resolutions, appoint from among the commissioners of the authorities an executive committee with full power to act on behalf of the author-

ities with respect to any or all of their powers, as prescribed by resolutions of the authorities.

**History.** Acts 1937, No. 298, § 11; Pope's Dig., § 10069; Acts 1943, No. 280, § 1; A.S.A. 1947, § 19-3014.

## 14-169-225. Federal aid or cooperation.

(a)(1) In addition to the powers conferred upon a housing authority by other provisions of this subchapter, the authority is empowered to:

(A) Borrow money or accept grants or other financial assistance from the federal government for, or in aid of, any housing project within its area of operation;

(B) Take over or lease or manage any housing project or undertak-

ing constructed or owned by the federal government; and

(C) To these ends, comply with such conditions and enter into such mortgages, trust indentures, leases, or agreements as may be neces-

sary, convenient, or desirable.

- (2) It is the purpose and intent of this section to authorize every authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance, or operation of any housing project by an authority.
- (b) A housing authority shall have the power to procure insurance or guarantees from the federal government of the payment of any debts, or parts thereof, whether or not incurred by the authority, secured by mortgages on any property included in any of its housing projects.

**History.** Acts 1937, No. 298, §§ 8, 20; Pope's Dig., §§ 10066, 10078; A.S.A. 1947, §§ 19-3011, 19-3023.

#### CASE NOTES

Cited: Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1, 778 F.2d 404 (8th Cir. 1985).

# 14-169-226. Agreement to sell project as security for federal obligations.

(a)(1) In any contract or amendatory or superseding contract for a loan and annual contributions entered into between any housing authority and the federal government or any of its agencies, with respect to any housing project undertaken by the authority, the authority is authorized to make such covenants, including covenants with holders of obligations of the authority issued for purposes of the project involved. The authority may confer upon the federal government or any of its agencies such rights and remedies as the authority deems

necessary to assure the fulfillment of the purposes for which the project was undertaken.

(2) In any such contract, the authority may, notwithstanding any other provisions of law, agree to sell and convey the project, including all lands appertaining to it, to which the contract relates to the federal government, or any agency thereof, upon the occurrence of such conditions, or upon such defaults on obligations for which any of the annual contributions provided in the contract are pledged, as may be prescribed in the contract, and at a price, which may include the assumption by the federal government, or any agency thereof, of the payment, when due, of the principal of, and interest on, outstanding obligations of the housing authority issued for purposes of the project involved, determined as prescribed and upon such other terms and conditions as are provided in the contract.

(b) Any authority is authorized to enter into such supplementary contracts and to execute such conveyances as may be necessary to carry

out the provisions of this section.

(c) Notwithstanding any other provisions of law, any contracts, supplementary contracts, or any conveyances made or executed pursuant to the provisions of this section shall not be or constitute a mortgage within the meaning of, or for the purposes of, any of the laws of this state.

**History.** Acts 1943, No. 280, § 11; A.S.A. 1947, § 19-3024.

# 14-169-227. Aid and cooperation by state public bodies.

(a) For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of housing projects, including projects of the federal government, located within the area in which it is authorized to act, any state public body may, upon such terms, with or without consideration, as it may determine:

(1) Dedicate, sell, convey, or lease any of its property to a housing

authority or the federal government;

(2) Cause parks, playgrounds, and recreational, community, educational, water, sewer, or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished adjacent to, or in connection with, projects;

(3) Furnish, dedicate, close, pave, install, grade, regrade, plan, or replan streets, roads, roadways, alleys, sidewalks, or other works which

it is otherwise empowered to undertake;

(4) Plan or replan, zone or rezone any part of the state public body and make exceptions from building regulations and ordinances. Any city or town also may change its map;

(5) Enter into agreements which may extend over any period, notwithstanding any provision or rule of law to the contrary, with an authority or the federal government respecting action to be taken by the state public body pursuant to any of the powers granted by this subchapter; and

(6) Do any and all things necessary or convenient to aid and cooperate in the planning, undertaking, construction, or operation of

projects.

- (b) With respect to any housing project which an authority has acquired or taken over from the federal government and which the authority by resolution has found and declared to have been constructed in a manner that will promote the public interest and afford necessary safety, sanitation, and other protection, no state public body shall require any changes to be made in the project or the manner of its construction or take any other action relating to the construction.
- (c) In connection with any public improvements made by a state public body in exercising the powers granted in this section, the state public body may incur the entire expense of the improvements.
- (d) Any law or statute to the contrary notwithstanding, any sale or conveyance to, or any lease or agreement with, an authority or the federal government may be made by a state public body pursuant to this section without appraisal, public notice, advertisement, or public bidding.

**History.** Acts 1937, No. 298, § 25; Pope's Dig., § 10083; A.S.A. 1947, § 19-3029.

# 14-169-228. Additional powers of public bodies to aid or cooperate.

For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of housing projects, including housing projects of the federal government, located within the area in which it is authorized to act, any state public body may, in addition to other powers conferred on them by this subchapter or any other law, upon such terms, with or without consideration, as it may determine:

(1) Grant easements, licenses, or any other rights or privileges to a

housing authority;

(2) Cause services to be furnished to an authority of the character which the state public body is otherwise empowered to furnish;

(3) Enter into agreements with respect to the exercise by the state public body of its powers relating to the repair, demolition, or closing of

unsafe, insanitary, or unfit dwellings; and

(4) Employ, notwithstanding the provisions of any other law, any funds belonging to, or within the control of, the state public body, including funds derived from the sale or furnishing of property or facilities to an authority, in the purchase of the bonds or other obligations of an authority, and exercise all the rights of any holder of any such bonds or other obligations.

**History.** Acts 1941, No. 352, § 3; A.S.A. 1947, § 19-3030.

## 14-169-229. Public appropriations and loans.

- (a)(1) When any housing authority which is created for any city or county becomes authorized to transact business and exercise its powers in it, the governing body of the city or county, as the case may be, shall immediately make an estimate of the amount of money necessary for the administrative expenses and overhead of the authority during the first year. The governing body shall appropriate that amount to the authority out of any moneys in the treasury of the city or county not appropriated to some other purpose.
  - (2) The moneys so appropriated shall be paid to the authority as a

donation.

- (b)(1) Any city, town, or county located, in whole or in part, within the area of operation of a housing authority shall have the power from time to time to lend or donate money to the authority or agree to take such action.
- (2) The authority, when it has money available, shall make reimbursements for all such loans made to it by way of loans.

**History.** Acts 1937, No. 298, § 26; Pope's Dig., § 10084; A.S.A. 1947, § 19-3031.

#### **CASE NOTES**

ANALYSIS

Constitutionality. In general. Approval.

#### Constitutionality.

Provision for payment by city of estimated administrative expenses of the authority for its first year does not render this subchapter unconstitutional. Hogue v. Housing Auth., 201 Ark. 263, 144 S.W.2d 49 (1940).

#### In General.

This subchapter does not authorize an unconstitutional loan or use of municipal

credit, nor a misuse of public funds by municipalities. Hogue v. Housing Auth., 201 Ark. 263, 144 S.W.2d 49 (1940).

## Approval.

As this section provides for the appropriation of public funds a initiative ordinance to erase the possibility of city funds being appropriated is one of the acts which Ark. Const. Amend. 7 specifically reserves to the people to approve or disapprove. Cochran v. Black, 240 Ark. 393, 400 S.W.2d 280 (1966).

## 14-169-230. Authority to exercise powers.

- (a)(1) The exercise by a state public body of the powers granted in this subchapter may be authorized by resolution of the governing body of the state public body adopted by a majority of the members present at a meeting of the governing body.
- (2) The resolution may be adopted at the meeting at which it is introduced

(b) The resolution shall take effect immediately upon passage and need not thereafter be laid over, published, or posted.

**History.** Acts 1937, No. 298, § 27; Pope's Dig., § 10085; A.S.A. 1947, § 19-3032.

## 14-169-231. Contracts for services furnished by public body.

(a) In connection with any housing project located within the area in which it is authorized to act, any state public body may contract with a housing authority or the federal government with respect to the sums, if any, which the housing authority or federal government may agree to pay, during any year or period of years, to the state public body for the improvements, services, and facilities to be furnished by it for the benefit of the project. However, in no event shall the amount of the payments exceed the estimated cost to the state public body of the improvements, services, or facilities to be furnished.

(b) The absence of a contract for the payments shall in no way relieve any state public body from the duty to furnish, for the benefit of the project, customary improvements and such services and facilities as the

state public body furnishes customarily without a service fee.

**History.** Acts 1937, No. 298, § 24; Pope's Dig., § 10082; A.S.A. 1947, § 19-3028.

## 14-169-232. Statutory remedies of obligee.

An obligee of a housing authority shall have the right, in addition to all other rights which may be conferred on the obligee, subject only to any contractual restrictions binding upon the obligee:

(1) By mandamus, suit, action, or proceeding, at law or in equity, to compel the authority and its commissioners, officers, agents, or employ-

ees to:

(A) Perform each and every term, provision, and covenant contained in any contract of the authority with or for the benefit of the obligee; and

(B) Require the carrying out of any or all covenants and agreements of the authority and the fulfillment of all duties imposed upon

the authority by this subchapter; and

(2) By suit, action, or proceeding in equity, to enjoin any acts or things which may be unlawful or the violation of any of the rights of the obligee of the authority.

**History.** Acts 1937, No. 298, § 17; Pope's Dig., § 10075; A.S.A. 1947, § 19-3020.

## 14-169-233. Additional remedies conferrable on obligees.

A housing authority shall have power, by its resolution, trust indenture, mortgage, lease, or other contract, to confer upon any obligee holding or representing a specified amount in bonds or holding a lease the right, in addition to all rights that may otherwise be conferred, upon the happening of an event of default as defined in the resolution or instrument, by suit, action, or proceeding in any court of competent jurisdiction to:

(1) Cause possession of any housing project, or any part of it, to be

surrendered to any such obligee;

(2)(A) Obtain the appointment of a receiver of any housing project of the authority, or any part of it, and of the rents and profits from it.

(B) If a receiver is appointed, he may:

(i) Enter and take possession of the housing project or any part of it;

(ii) Operate and maintain the project; and

(iii) Collect and receive all fees, rents, revenues, or other charges

thereafter arising from the project.

- (C) The receiver shall keep the moneys in a separate account or accounts and apply them in accordance with the obligations of the authority, as the court shall direct; and
- (3) Require the authority and its commissioners to account as if it and they were the trustees of an express trust.

**History.** Acts 1937, No. 298, § 18; Pope's Dig., § 10076; A.S.A. 1947, § 19-3021.

# 14-169-234. Exemption of property from execution.

(a) All real property of a housing authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against it, nor shall any judgment against the

authority be a charge or lien upon its real property.

(b) The provisions of this section shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage of any authority or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by an authority on its rents, fees, or revenues.

**History.** Acts 1937, No. 298, § 19; Pope's Dig., § 10077; A.S.A. 1947, § 19-3022.

#### CASE NOTES

Lien on Purchased Property.

A local housing authority's purchase of a project upon which a lien exists does not destroy that lien because the project is

municipally owned; it would be unjust to permit a municipality, by purchasing private property which is subject to claims for mechanic's lien rights, to defeat those liens simply because the property has been acquired for municipal purposes. Rawick Mfg. Co. v. Talisman, Inc., 17 Ark. App. 202, 706 S.W.2d 194 (1986).

## 14-169-235. Tax exemption of certain property.

(a) The property of a housing authority used exclusively for public purposes and not for profit is declared to be public property, and this property and the authority shall be exempt from all taxes and special

assessments from the state or any state public body.

(b) Any property of an authority used for commercial, business, or industrial purposes shall be assessed and ad valorem taxes paid on it in the manner provided by law for the assessment and payment of taxes on other property, and the authority shall furnish the assessor with a certified statement, in writing, of the value at which the property was originally acquired to assist the assessor in arriving at the assessable value of it as provided by law.

(c) An authority may agree to make payments in lieu of taxes to a state public body for the benefit of a public housing project. However, in no event shall such payments exceed the estimated cost to the state public body of the improvements, services, or facilities to be so fur-

nished.

**History.** Acts 1937, No. 298, § 23; § 1; 1973, No. 193, § 1; A.S.A. 1947, § 19-Pope's Dig., § 10081; Acts 1969, No. 258, 3027.

### RESEARCH REFERENCES

Ark. L. Rev. Property Tax Exemptions in Arkansas, 4 Ark. L. Rev. 433.

# 14-169-236. Fixing of rental rates.

(a) It is declared to be the policy of this state that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe, and sanitary dwelling accommodations and that no housing authority shall construct or operate any project for profit or as a source of revenue to the city or the county.

(b) To this end, an authority shall fix the rentals for dwellings in its projects at no higher rates than it shall find to be necessary in order to produce revenues which, together with all other available moneys, revenues, income, and receipts of the authority from whatever sources

derived, will be sufficient to:

(1) Pay, as they become due, the principal and interest on the bonds

of the authority;

(2) Meet the cost of, and to provide for, maintaining and operating the projects, including the cost of any insurance, and the administrative expenses of the authority; and

(3) Create, during not less than the six (6) years immediately succeeding its issuance of any bonds, a reserve sufficient to meet the

largest principal and interest payments which will be due on the bonds in any one (1) year thereafter, and maintain the reserve.

**History.** Acts 1937, No. 298, § 9; Pope's Dig., § 10067; A.S.A. 1947, § 19-3012.

## 14-169-237. Rentals and tenant selection.

In the operation or management of housing projects, a housing authority shall at all times observe the following duties with respect to rentals and tenant selection:

(1) It may rent or lease the dwelling accommodations in them only to persons of low income:

(2) It may rent or lease the dwelling accommodations in them only at

rentals within the financial reach of persons of low income;

(3) It may rent or lease to a tenant dwelling accommodations consisting of the number of rooms, but no greater number, which it deems necessary to provide safe and sanitary accommodations to the

proposed occupants without overcrowding;

- (4)(A) It shall not accept any person as a tenant in any housing project if the persons who would occupy the dwelling accommodations have an annual income in excess of five (5) times the annual rental of the quarters to be furnished the persons. However, in the case of families with three (3) or more minor dependents, the ratio shall not exceed six (6) to one (1).
- (B) In computing the rental for the purpose of selecting tenants, there shall be included in the rental the average annual cost to the occupants, as determined by the authority, of heat, water, electricity, gas, cooking range, and other necessary services or facilities, whether or not the charge for those services and facilities is in fact included in the rental.

**History.** Acts 1937, No. 298, § 10; Pope's Dig., § 10068; Acts 1941, No. 352, § 1; A.S.A. 1947, § 19-3013.

# 14-169-238. Right to possession, etc.

Nothing contained in § 14-169-236 or § 14-169-237 shall be construed as limiting the power of a housing authority to vest in an obligee the right, in the event of a default by the authority, to take possession of a housing project, or cause the appointment of a receiver of it, or acquire title to it, free from all the restrictions imposed by those statutes.

**History.** Acts 1937, No. 298, § 10; Pope's Dig., § 10068; Acts 1941, No. 352, § 1; A.S.A. 1947, § 19-3013.

## 14-169-239. Security for funds deposited.

(a) A housing authority, by resolution, may provide that all moneys deposited by it shall be secured by:

(1) Obligations of the United States or of the state, of a market value

equal at all times to the amount of the deposits; or

(2) Any securities in which savings banks may legally invest funds within their control: or

(3) An undertaking, with such sureties as shall be approved by the authority, faithfully to keep and pay over upon the order of the authority any such deposits and agreed interest on them.

(b) All banks and trust companies are authorized to give any such

security for the deposits.

History. Acts 1937, No. 298, § 21; Pope's Dig., § 10079; A.S.A. 1947, § 19-3025.

# 14-169-240. Reports and recommendations.

At least once a year, a housing authority shall file with the clerk a report of its activities for the preceding year and shall make recommendations with reference to such additional legislation or other action as it deems necessary in order to carry out the purposes of this subchapter.

History. Acts 1937, No. 298, § 28; Pope's Dig., § 10086; A.S.A. 1947, § 19-3033.

#### **CASE NOTES**

Cited: Fulmer v. Holcomb, 261 Ark. 580, 550 S.W.2d 442 (1977).

## Subchapter 3 — Regional Housing Authorities

SECTION.	SECTION.
14-169-301. Provisions controlling.	14-169-312. Commissioners — Power and
14-169-302. Functions, etc., of authority	authority.
generally.	14-169-313. Chairman, officers, and em-
14-169-303. Powers supplemental.	ployees of authority.
14-169-304. Creation generally.	14-169-314. Area of operation.
14-169-305. Creation — Deed from	14-169-315. Increase of area.
county to regional author-	14-169-316. Increase of area — Deed
ity.	from county to regional au-
14-169-306. Creation — Proof of validity.	thority.
14-169-307. Applicability of housing au-	1 1 1 2 2 2 1 1 1 1
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thorities law.	14-169-317. Decreasing operational area — Detachment of counties.
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thorities law.	— Detachment of counties.
thorities law. 14-169-308. Commissioners generally.	— Detachment of counties. 14-169-318. Housing authority for county

Effective Dates. Acts 1941, No. 352, § 13: approved Mar. 26, 1941. Emergency clause provided: "Inasmuch as there is no statutory provision for the creation and establishment of regional housing authorities to provide dwelling accommodations for persons of low income which are urgently needed by inhabitants of the State residing in unsafe and insanitary dwelling accommodations and there is no specific statutory provision authorizing county housing authorities and regional housing authorities to provide housing for farmers of low income, it is necessary for the immediate preservation of the public peace, health and safety that this act become effective without delay. This act, therefore, shall take effect and be in full force from and after its passage."

Acts 1943, No. 280, § 17: approved Mar. 23, 1943. Emergency clause provided: "Inasmuch as there is no statutory provision for the creation and establishment of consolidated housing authorities by two or more municipalities nor other provisions contained in this act that are necessary to

make housing authorities in this State more efficient and economical administrative units, it is necessary for the immediate preservation of the public peace, health and safety that this act become effective without delay. This act, therefore, shall take effect and be in full force from and after its passage."

Acts 1949, No. 340, § 3: Mar. 21, 1949. Emergency clause provided: "Whereas, in certain regional housing authorities in this State there has been construction in only one county thereof, and

"Whereas, the further participation of such county in the area of operation of such regional housing authority is unduly burdensome and uneconomical, which condition would be immediately corrected under the terms of this Act,

"Now therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

# 14-169-301. Provisions controlling.

Insofar as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling.

History. Acts 1941, No. 352, § 11; 352, codified as §§ 14-169-223, 14-169-A.S.A. 1947, § 19-3045n. 228, 14-169-237, 14-169-238, 14-169-301 Meaning of "this act". Acts 1941, No. — 14-169-313, 14-169-501 — 14-169-503.

## 14-169-302. Functions, etc., of authority generally.

Except as otherwise provided in this act, a regional housing authority and its commissioners shall have within the area of operation of the regional housing authority the same functions, rights, powers, duties, privileges, immunities, and limitations provided for housing authorities created for cities of the first class or counties and the commissioners of those housing authorities in the same manner as though all the provisions of law applicable to housing authorities created for cities of the first class or counties were applicable to regional housing authorities.

**History.** Acts 1941, No. 352, § 6; A.S.A. 1947, § 19-3044.

Meaning of "this act". See note to § 14-169-301.

## 14-169-303. Powers supplemental.

The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law.

**History.** Acts 1941, No. 352, § 10; **Meaning of "this act".** See note to A.S.A. 1947, § 19-3045. § 14-169-301.

## 14-169-304. Creation generally.

(a)(1) If the governing body of each of two (2) or more contiguous counties, by resolution, declares that there is a need for one (1) housing authority to be created for all of the contiguous counties to exercise in those counties powers and other functions prescribed for a regional housing authority, then a public body corporate and politic to be known as a regional housing authority shall thereupon exist for all of the counties and exercise its powers and other functions in the counties.

(2) Thereupon each county housing authority created for each of these counties shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as

provided in this section.

(b) The governing body of each of two (2) or more contiguous counties shall, by resolution, declare that there is a need for one (1) regional housing authority to be created for all of the counties to exercise in those counties the powers and other functions prescribed for a regional housing authority only if the governing body finds that:

(1) Unsanitary or unsafe inhabited dwelling accommodations exist in the county or there is a shortage of safe or sanitary dwelling accommodations in the county available to persons of low income at

rentals they can afford; and

(2) A regional housing authority would be a more efficient or economical administrative unit than the housing authority of the county.

(c) The governing body of a county shall not adopt a resolution as prescribed in this section if there is a county housing authority created for the county which has any bonds or notes outstanding unless:

(1) All holders of the bonds and notes consent, in writing, to the substitution of the regional housing authority in lieu of the county

housing authority on all such bonds and notes; and

(2) The commissioners of the county housing authority adopt a resolution consenting to the transfer of all the rights, contracts, obligations, and property, real and personal, of the county housing authority to the regional housing authority as provided in this section.

(d) When the conditions of subsection (b) of this section are complied with and the regional housing authority is created and authorized to

exercise its powers and other functions:

(1) All rights, contracts, agreements, obligations, and real and personal property of the county housing authority shall be in the name of, and vest in, the regional housing authority;

(2) All obligations of the county housing authority shall be the

obligations of the regional housing authority; and

(3) All rights and remedies of any person against the county housing authority may be asserted, enforced, and prosecuted against the regional housing authority to the same extent as they might have been asserted, enforced, and prosecuted against the county housing authority.

**History.** Acts 1941, No. 352, § 4; 1943, No. 280, § 2; A.S.A. 1947, § 19-3038.

#### **CASE NOTES**

Conveyances Subject to Repurchase.
Where authority developed parcels of land conveyed to authority subject to right of repurchase by former landowner, the amount of repurchase would be not less

than the average balance due on each parcel of land. East Cent. Ark. Regional Hous. Auth. v. Moore, 219 Ark. 932, 246 S.W.2d 115 (1951).

# 14-169-305. Creation — Deed from county to regional authority.

(a) When any real property of a county housing authority vests in a regional housing authority, as provided in this section, the county housing authority shall execute a deed of such property to the regional housing authority, which thereupon shall file the deed in the office provided for in the filing of deeds.

(b) However, nothing contained in this section shall affect the vesting of property in the regional housing authority as provided in § 14-169-

304.

**History.** Acts 1941, No. 352, § 4; 1943, No. 280, § 2; A.S.A. 1947, § 19-3038.

## 14-169-306. Creation — Proof of validity.

(a) In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract of the regional housing authority, the authority shall be conclusively deemed to have become created as a public body corporate and politic and to have become established and authorized to transact business and exercise its powers under this subchapter upon proof of the adoption of a resolution by the governing body of each of the counties creating the regional housing authority declaring the need for the regional housing authority.

(b) Each such resolution shall be deemed sufficient if it declares that there is need for the regional housing authority and finds in substantially the foregoing terms, no further detail being necessary, that the

conditions enumerated in § 14-169-304(b)(1) and (2) exist.

(c) A copy of the resolution of the governing body of a county, duly certified by the clerk of the county, shall be admissible in evidence in any suit, action, or proceeding.

**History.** Acts 1941, No. 352, § 4; 1943, No. 280, § 2; A.S.A. 1947, § 19-3038.

## 14-169-307. Applicability of housing authorities law.

Except as otherwise provided in this subchapter, all the provisions of law applicable to housing authorities created for counties and the commissioners of these authorities shall be applicable to regional housing authorities and their commissioners, unless a different meaning clearly appears from the context.

**History.** Acts 1941, No. 352, § 4; 1943, No. 280, § 2; A.S.A. 1947, § 19-3038.

## 14-169-308. Commissioners generally.

(a) The governing body of each county included in a regional housing authority shall appoint one (1) person as a commissioner of the authority.

(b) Each commissioner to be first appointed by the governing body of a county may be appointed at or after the time of the adoption of the resolution declaring the need for a regional housing authority or declaring the need for the inclusion of the county in the area of operation of the regional housing authority.

(c)(1) The commissioners of a regional housing authority shall be appointed for terms of five (5) years. However, all vacancies shall be

filled for the unexpired terms.

(2) When the term of office of a commissioner expires or any other vacancy occurs in the commission, the vacancy shall be filled in the same manner as provided for commissioners of housing authorities under § 14-169-208.

(3) Each commissioner shall hold office until his successor has been appointed and has qualified, except as otherwise provided in this

section.

(d)(1) A certificate of the appointment of any commissioner shall be filed with the clerk of the county.

(2) The certificate shall be conclusive evidence of the due and proper

appointment of the commissioner.

(e) If any county is excluded from the area of operation of a regional housing authority, the office of the commissioner of the regional housing authority appointed by the governing body of the county shall be abolished.

**History.** Acts 1941, No. 352, § 5; 1943, Amendments. The 1993 amendment No. 280, § 3; A.S.A. 1947, § 19-3039; Acts rewrote (c)(2). 1993, No. 539, § 1.

# 14-169-309. Additional commissioners.

(a)(1) When the area of operation of a regional housing authority is increased to include an additional county as provided in § 14-169-304, the governing body of each county shall thereupon appoint one (1) additional person as a commissioner of the regional housing authority.

(2) If the area of operation of a regional housing authority consists at any time of an even number of counties, the commissioners of the regional housing authority appointed by the governing bodies of the counties shall appoint one (1) additional commissioner, whose term of office shall be as provided in this section for a commissioner of a regional housing authority except that such term shall end at any earlier time that the area of operation of the regional housing authority shall be changed to consist of an odd number of counties.

(b)(1) The term of office of such person begins during the terms of

office of the commissioners appointing him.

- (2) The commissioners of the authority appointed by the governing bodies of the counties shall likewise appoint each person to succeed the additional commissioners.
- (c) A certificate of the appointment of any additional commissioner of the regional housing authority shall be filed with the other records of the regional housing authority and shall be conclusive evidence of the due and proper appointment of the additional commissioner.

**History.** Acts 1941, No. 352, § 5; 1943, No. 280, § 3; A.S.A. 1947, § 19-3039.

## 14-169-310. Commissioners — Removal.

(a) For inefficiency or neglect of duty or misconduct in office, a commissioner of a regional housing authority may be removed by the governing body appointing him or, in the case of the commissioner appointed by the commissioners of the regional housing authority, by such commissioners.

(b) A commissioner shall be removed only after he shall have been given a copy of the charges against him at least ten (10) days prior to the hearing on them and if the commissioner shall have had an

opportunity to be heard in person or by counsel.

(c)(1) In the event of the removal of a commissioner by the governing body appointing him, a record of the proceedings, together with the charges and findings on them, shall be filed in the office of the clerk of the county.

(2) In the case of the removal of the commissioner appointed by the commissioners of the regional housing authority, the record shall be

filed with the other records of the regional housing authority.

**History.** Acts 1941, No. 352, § 5; 1943, No. 280, § 3; A.S.A. 1947, § 19-3039.

# 14-169-311. Commissioners — Quorum.

A majority of the commissioners of a regional housing authority shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes.

**History.** Acts 1941, No. 352, § 5; 1943, No. 280, § 3; A.S.A. 1947, § 19-3039.

## 14-169-312. Commissioners — Power and authority.

The commissioners shall constitute the regional housing authority, and the powers of the authority shall be vested in the commissioners in office from time to time.

**History.** Acts 1941, No. 352, § 5; 1943, No. 280, § 3; A.S.A. 1947, § 19-3039.

## 14-169-313. Chairman, officers, and employees of authority.

The commissioners of a regional housing authority shall elect a chairman from among the commissioners and shall have power to select or employ such other officers and employees as the regional housing authority may require.

**History.** Acts 1941, No. 352, § 5; 1943, No. 280, § 3; A.S.A. 1947, § 19-3039.

## 14-169-314. Area of operation.

(a) Except as otherwise provided in this subchapter, the area of operation of a regional housing authority shall include all of the counties for which the authority is created and established except that portion of the counties which lies within the territorial boundaries of any city of the first class.

(b) The governing body of each of the counties in the regional housing authority, the commissioners of the regional housing authority, and the governing body of each additional county shall, by resolution, declare that there is a need for the inclusion of the county in the area of

operation of the regional housing authority only if:

(1) The governing body of each additional county finds that unsanitary or unsafe inhabited dwelling accommodations exist in the county or there is a shortage of safe or sanitary dwelling accommodations in the county available to persons of low income at rentals they can afford; and

(2) The governing body of each of the counties then included in the area of operation of the regional housing authority, the commissioners of the regional housing authority, and the governing body of each additional county finds that the regional housing authority would be a more efficient or economical administrative unit if the area of operation of the regional housing authority is increased to include the additional county.

**History.** Acts 1943, No. 280, § 4; A.S.A. 1947, § 19-3040.

## 14-169-315. Increase of area.

(a) The area of operation of a regional housing authority may be increased from time to time to include one (1) or more additional contiguous counties not already within a regional housing authority if the governing body of each of the counties then included in the area of operation of the regional housing authority, the commissioners of the regional housing authority, and the governing body of each additional county each adopt a resolution declaring that there is a need for the inclusion of the additional county in the area of operation of the regional housing authority.

(b) Upon the adoption of these resolutions, the county housing authority created for each additional county shall cease to exist except for the purpose of winding up its affairs and executing a deed to the

regional housing authority as provided in this section.

(c) The resolution shall not be adopted if there is a county housing authority created for any additional county which has any bonds or notes outstanding unless:

(1) All holders of the bonds and notes consent, in writing, to the substitution of the regional housing authority in lieu of the county

housing authority as the obligor on them; and

(2) The commissioners of the county housing authority adopt a resolution consenting to the transfer of all the rights, contracts, obligations, and real and personal property of the county housing authority to the regional housing authority as provided in this section.

(d) When the conditions of subsection (c) of this section are complied with and the area of operation of the regional housing authority is increased to include the additional county, as provided in this section:

(1) All rights, contracts, agreements, obligations, and real and personal property of the county housing authority shall be in the name of and vest in the regional housing authority;

(2) All obligations of the county housing authority shall be the

obligations of the regional housing authority; and

(3) All rights and remedies of any person against the county housing authority may be asserted, enforced, and prosecuted against the regional housing authority to the same extent as they might have been asserted, enforced, and prosecuted against the county housing authority.

**History.** Acts 1943, No. 280, § 4; A.S.A. 1947, § 19-3040.

# 14-169-316. Increase of area — Deed from county to regional authority.

When any real property of a county housing authority vests in a regional housing authority as provided in §§ 14-169-314 and 14-169-315, the county housing authority shall execute a deed of the property to the regional housing authority, which thereupon shall file the deed in the office provided for the filing of deeds. However, nothing contained in

this section shall affect the vesting of property in the regional housing authority as provided in §§ 14-169-314 and 14-169-315.

**History.** Acts 1943, No. 280, § 4; A.S.A. 1947, § 19-3040.

# 14-169-317. Decreasing operational area — Detachment of counties.

(a)(1) The area of operation of a regional housing authority shall be decreased from time to time to exclude one (1) or more counties from the area if the governing body of each of the counties in the area and the commissioners of the regional housing authority each adopt a resolution declaring that there is a need for excluding a county from the area. However, no action may be taken pursuant to this section if the regional housing authority has outstanding any bonds or notes unless all holders of the bonds and notes consent, in writing, to the action.

(2)(A) If such action decreases the area of operation of the regional housing authority to only one (1) county, the authority shall thereupon constitute and become a housing authority for the county, in the same manner, and with the same rights, powers, and immunities, as though the authority were created by and authorized to transact business and exercise its powers pursuant to § 14-169-207.

(B) The commissioners of such authority shall be thereupon appointed as provided in § 14-169-208 for the appointment of commis-

sioners of a housing authority created for a county.

(b) The governing body of each of the counties in the area of operation of the regional housing authority and the commissioners of the regional housing authority shall adopt a resolution declaring that

there is a need for excluding a county from the area only if:

(1) Each governing body of the counties to remain in the area of operation of the regional housing authority and the commissioners of the regional housing authority find that, because of facts arising or determined subsequent to the time when the area first included the county to be excluded, the regional housing authority would be a more efficient or economical administrative unit if that county were excluded from the area; and

(2) The governing body of each county to be excluded and the commissioners of the regional housing authority each also find that, because of the changed facts, another housing authority for the county would be a more efficient or economical administrative unit to function

in the county.

(c)(1) In all regional housing authorities in this state in which there is construction in only one (1) county, the governing body of that county shall have the power, if it deems it to be in the best interest of the county, to enter an order detaching the county from the regional housing authority.

(2) Upon the entry of such order, the county shall thereupon cease to

be a part of the regional housing authority.

(d)(1) All rights, contracts, agreements, obligations, and property, real and personal, of a regional housing authority shall be in the name of and vested in the county housing authority of the county when one shall have been created there under the provisions of § 14-169-318;

(2) All obligations of the regional housing authority shall thereupon

be the obligations of the county housing authority; and

(3) All rights and remedies of any person against the regional housing authority may thereupon be asserted, enforced, and prosecuted against the county housing authority to the same extent as they might have been asserted, enforced, and prosecuted against the regional housing authority.

**History.** Acts 1943, No. 280, § 5; 1949, No. 340, § 1; A.S.A. 1947, § 19-3041.

## 14-169-318. Housing authority for county excluded or detached.

- (a) At any time after the exclusion or detachment of any county from the area of operation of a regional housing authority, as provided in this subchapter, the governing body of any such county may adopt a resolution or enter an order declaring that there is need for a housing authority in the county if the governing body shall find such need according to the provisions of § 14-169-207. Thereupon, a public body corporate and politic to be known as the housing authority of the county shall exist for that county, the five (5) commissioners of which shall be appointed by the governing body of that county and may transact business and exercise its powers in the same manner, and shall have the same rights, powers, and immunities, as though created by § 14-169-207.
- (b) Nothing contained in this section shall be construed as preventing that county from thereafter being included within the area of operation of a regional housing authority as provided in this subchapter.

**History.** Acts 1943, No. 280, § 6; 1949, No. 340, § 2; A.S.A. 1947, § 19-3042.

# 14-169-319. Procedures to create authority or change area.

(a)(1) The governing body of a county shall not adopt any resolution authorized by §§ 14-169-304, 14-169-315, or 14-169-317 unless a public

hearing has first been held.

(2) The clerk of the county shall give notice of the time, place, and purpose of the public hearing at least ten (10) days prior to the day on which the hearing is to be held, in a newspaper published in the county, or if there is no newspaper published in the county, then in a newspaper published in the state and having a general circulation in the county.

(3) Upon the date fixed for the public hearing, an opportunity to be heard shall be granted to all residents of the county and to all other

interested persons.

- (b) In determining whether dwelling accommodations are unsafe or unsanitary, the governing body of a county shall take into consideration:
  - (1) The safety and sanitation of dwellings;
- (2) The light and air space available to the inhabitants of the dwellings;

(3) The degree of overcrowding;

(4) The size and arrangement of the rooms; and

(5) The extent to which conditions exist in the dwellings which

endanger life or property by fire or other causes.

(c) In connection with the issuance of bonds, a regional housing authority may covenant as to limitations on its right to adopt resolutions relating to the increase or decrease of its area of operation.

**History.** Acts 1943, No. 280, § 7; A.S.A. 1947, § 19-3043.

## Subchapter 4 — Consolidated Housing Authorities

SECTION.
14-169-401. Creation and authority generally.

Effective Dates. Acts 1943, No. 280, § 17: approved Mar. 23, 1943. Emergency clause provided: "Inasmuch as there is no statutory provision for the creation and establishment of consolidated housing authorities by two or more municipalities nor other provisions contained in this act that are necessary to make housing au-

thorities in this State more efficient and economical administrative units, it is necessary for the immediate preservation of the public peace, health and safety that this act become effective without delay. This act, therefore, shall take effect and be in full force from and after its passage."

## 14-169-401. Creation and authority generally.

(a)(1)(A) If the governing body of each of two (2) or more municipalities declares, by resolution, that there is a need for one (1) housing authority for all of the municipalities to exercise in the municipalities the powers and other functions prescribed for a housing authority, a public body corporate and politic to be known as a consolidated housing authority, with such corporate name as it selects, shall thereupon exist for all of the municipalities and exercise its powers and other functions within its area of operation, as defined in this section, including the power to undertake projects in it. Thereupon, any housing authority created for any of the municipalities shall cease to exist except for the purpose of winding up its affairs and executing a deed of its real property to the consolidated housing authority.

(B) The creation of a consolidated housing authority and the finding of need for it shall be subject to the same provisions and

limitations of §§ 14-169-101 - 14-169-106, 14-169-223, 14-169-224, 14-169-226, 14-169-228, 14-169-237, 14-169-238, 14-169-301 - 14-169-319, 14-169-401, and 14-169-501 - 14-169-503 applicable to the creation of a regional housing authority, and all of these provisions applicable to regional housing authorities and their commissioners shall be applicable to consolidated housing authorities and their commissioners.

(2)(A) The area of operation of a consolidated housing authority shall include all of the territory within the boundaries of each municipality joining in the creation of the authority, together with the territory

within five (5) miles of the boundaries of each municipality.

(B)(i) An area of operation may be changed to include or exclude any municipality with its surrounding territory in the same manner and under the same provisions as provided in §§ 14-169-101 — 14-169-106, 14-169-223, 14-169-224, 14-169-226, 14-169-228, 14-169-237, 14-169-238, 14-169-301 — 14-169-319, 14-169-401, and 14-169-501 — 14-169-503 for changing the area of operation of a regional housing authority by including or excluding a contiguous county.

(ii) For all such purposes:

(a) The term "county" shall be construed as meaning "municipality";

(b) The term "governing body" in §§ 14-169-308 — 14-169-310 shall be construed as meaning "mayor or other executive head of the municipality"; and

(c) The terms "county housing authority" and "regional housing authority" shall be construed as meaning "housing authority of the city or town" and "consolidated housing authority," respectively, unless a

different meaning clearly appears from the context.

(b)(1) The governing body of a municipality for which a housing authority has not been created may adopt the resolution as prescribed in this section if it first declares that there is a need for a housing authority to function in the municipality.

(2) The declaration shall be made in the same manner and subject to the same conditions as the declaration of the governing body of a city required by § 14-169-207 for the purpose of authorizing a housing authority created for a city to transact business and exercise its powers.

(c) Except as otherwise provided in this section, a consolidated housing authority and the commissioners of it shall have, within the area of operation of the consolidated housing authority, the same functions, rights, powers, duties, privileges, immunities, and limitations as those provided for housing authorities created for cities, counties, or groups of counties and the commissioners of such housing authorities, in the same manner as though all the provisions of law applicable to housing authorities created for cities, counties, or groups of counties were applicable to consolidated housing authorities.

## Subchapter 5 — Rural Housing Projects

SECTION. 14-169-501. Definition. 14-169-502. Authority generally.

14-169-503. Applications by farmers.

Effective Dates. Acts 1941, No. 352, § 13: approved Mar. 26, 1941. Emergency clause provided: "Inasmuch as there is no statutory provision for the creation and establishment of regional housing authorities to provide dwelling accommodations for persons of low income which are urgently needed by inhabitants of the State residing in unsafe and insanitary dwelling accommodations and there is no specific

statutory provision authorizing county housing authorities and regional housing authorities to provide housing for farmers of low income, it is necessary for the immediate preservation of the public peace, health and safety that this act become effective without delay. This act, therefore, shall take effect and be in full force from and after its passage."

## 14-169-501. Definition.

As used in this subchapter, unless the context otherwise requires, "farmers of low income" means persons or families who, at the time of their admission to occupancy in a dwelling of a housing authority:

(1) Live under unsafe or unsanitary housing conditions;

(2) Derive their principal income from operating or working upon a farm; and

(3) Had an aggregate average annual net income for the three (3) years preceding their admission that was less than the amount determined by the housing authority to be necessary, within its area of operation, to enable them, without financial assistance, to obtain decent, safe, and sanitary housing, without overcrowding.

**History.** Acts 1941, No. 352, § 9; A.S.A. 1947, § 19-3055.

## 14-169-502. Authority generally.

(a) County housing authorities and regional housing authorities are specifically empowered and authorized to borrow money, accept grants, and exercise their other powers to provide housing for farmers of low income.

(b) In connection with these projects, the housing authorities may enter into such leases or purchase agreements, accept such conveyances, and rent or sell dwellings forming part of the projects to or for farmers of low income, as such housing authorities deem necessary in order to assure the achievement of the objectives of this subchapter.

(c) The leases, agreements, or conveyances may include such covenants as the housing authority deems appropriate regarding the dwellings and the tracts of land described in any such instrument. These covenants shall be deemed to run with the land where the

housing authority deems it necessary and where the parties to the

instrument so stipulate.

(d) In providing housing for farmers of low income, county housing authorities and regional housing authorities shall not be subject to tenant selection limitations provided in § 14-169-237.

(e) Nothing contained in this section shall be construed as limiting

any other powers of any housing authority.

**History.** Acts 1941, No. 352, § 7; A.S.A. 1947, § 19-3053.

# 14-169-503. Applications by farmers.

(a) The owner of any farm operated, or worked upon, by a farmer of low income in need of safe and sanitary housing may file an application with a county housing authority or a regional housing authority requesting that it provide for a safe and sanitary dwelling for occupancy by the farmer of low income.

(b) The applications shall be received and examined by housing authorities in connection with the formulation of projects or programs

to provide housing for farmers of low income.

**History.** Acts 1941, No. 352, § 8; A.S.A. 1947, § 19-3054.

## SUBCHAPTER 6 — REDEVELOPMENT GENERALLY

SECTION.	SECTION.
14-169-601. Legislative declarations.	14-169-606. Local approval and assis-
14-169-602. Provisions controlling.	tance.
14-169-603. Powers supplemental.	14-169-607. Federal financial aid.
14-169-604. Authority generally.	14-169-608. Bonds deemed legal invest-
14-169-605. Rights, etc., of housing au-	ments.
thority.	14-169-609. Use of land in project.

Cross References. Community redevelopment financing, § 14-168-201 et seq.

#### CASE NOTES

Constitutionality.

This subchapter is not unconstitutional. Rowe v. Housing Auth., 220 Ark. 698, 249 S.W.2d 551 (1952).

## 14-169-601. Legislative declarations.

It is found and declared that:

- (1) There exists in many communities within this state blighted areas, as defined in § 14-169-604, or areas in the process of becoming blighted;
  - (2)(A) Such areas impair economic values and tax revenues;
  - (B) Such areas cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals, and welfare of the residents of the state; and
  - (C) These conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, and accident protection, and other public services and facilities:
- (3) The clearance, replanning, and preparation for rebuilding of these areas and the prevention or the reduction of blight and its causes are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of state concern;
  - (4)(A) Redevelopment activities will stimulate residential construction which is closely correlated with general economic activity; and
  - (B) Such undertakings authorized by this subchapter will aid the production of better housing and more desirable neighborhood and community development at lower costs and will make possible a more stable and larger volume of residential construction, which will assist materially in achieving and maintaining full employment; and (5)(A) It is in the public interest that advance preparation for such

projects and activities be made; and
(B) The necessity in the public interest for the provisions enacted in this subchapter is declared as a matter of legislative determination.

**History.** Acts 1945, No. 212, § 1; A.S.A. 1947, § 19-3056.

## 14-169-602. Provisions controlling.

Insofar as the provisions of this subchapter are inconsistent with the provisions of any other law, the provisions of this subchapter shall control.

**History.** Acts 1945, No. 212, § 10; A.S.A. 1947, § 19-3063n.

# 14-169-603. Powers supplemental.

The powers conferred by this subchapter shall be in addition and supplemental to the powers conferred by any other law.

**History.** Acts 1945, No. 212, §§ 8, 11; A.S.A. 1947, § 19-3063.

## 14-169-604. Authority generally.

Any housing authority established pursuant to the Housing Authorities Act, §§ 14-169-201 — 14-169-205, 14-169-207 — 14-169-225, 14-169-227, 14-169-229 — 14-169-240, and 14-169-804, and any amendments thereto, may carry out any work or undertaking to be called a

"redevelopment project", to:

(1) Acquire blighted areas, which are defined as areas, including slum areas, with buildings or improvements which by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors are detrimental to the safety, health, morals, or welfare of the community;

(2) Acquire other real property for the purpose of removing, prevent-

ing, or reducing blight, blighting factors, or the causes of blight;

(3) Acquire real property where the acquisition of the area by the

authority is necessary to carry out a redevelopment plan;

(4) Clear any areas acquired and install, construct, or reconstruct streets, utilities, and site improvements essential to the preparation of sites for uses in accordance with the redevelopment plan;

(5) Sell land so acquired for uses in accordance with the redevelop-

ment plan; or

(6) Accomplish a combination of these projects to carry out a redevelopment plan.

**History.** Acts 1945, No. 212, § 2; A.S.A. 1947, § 19-3057.

Publisher's Notes. Acts 1945, No. 212, § 11, provided, in part, that the enactment of the act would not be construed to

render invalid any action or proceeding had or taken for the creation or establishment of a housing authority pursuant to laws in existence prior to the enactment of the act.

# 14-169-605. Rights, etc., of housing authority.

(a) In undertaking development projects, a housing authority shall have all the rights, powers, privileges, and immunities that a housing authority has under the Housing Authorities Act, §§ 14-169-201 — 14-169-205, 14-169-207 — 14-169-225, 14-169-227, 14-169-229 — 14-169-240, and 14-169-804 and any other provision of law relating to slum clearance and housing projects for persons of low income including, without limiting the generality of the foregoing, the power to make and execute contracts, to issue bonds and other obligations and give security therefor, to acquire real property by eminent domain or purchase, and to do any and all things necessary to carry out projects, in the same manner as though all the provisions of law applicable to slum clearance and housing projects were applicable to redevelopment projects undertaken under this subchapter.

(b) Nothing contained in §§ 14-169-236 — 14-169-238 shall be construed as limiting the power of an authority, in the event of a default by a purchaser or lessee of land in a redevelopment plan, to acquire

property and operate it free from the restrictions contained in these statutes.

**History.** Acts 1945, No. 212, § 3; A.S.A. 1947, § 19-3058.

#### CASE NOTES

Condemnation Awards.

Where award as the reasonable market value of the property taken by city urban renewal agency is not contrary to the preponderance of its evidence, the award will stand. Urban Renewal Agency v. Shaw, 239 Ark. 994, 395 S.W.2d 741 (1965).

## 14-169-606. Local approval and assistance.

(a) An authority shall not initiate any redevelopment project under this subchapter until the governing body or agency designated by it or empowered by law so to act of each city or town, i.e., "municipalities," in which any of the area to be covered by the project is situated, has approved a plan, to be called the "redevelopment plan," which provides an outline for the development or redevelopment of the area and is sufficiently complete to indicate:

(1) Its relationship to definite local objectives as to appropriate land uses and improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements;

(2) Proposed land uses and building requirements in the area; and

(3) The method for the temporary relocation of persons living in such areas; and also the method for providing, unless already available, decent, safe, and sanitary dwellings substantially equal in number to the number of substandard dwellings to be cleared from the area, at rents within the financial reach of the income groups displaced from the substandard dwellings.

(b) Municipalities are authorized to approve redevelopment plans through their governing body or agency designated by it for that

purpose.

(c) Any state public body, as defined in § 14-169-203, shall have the same rights and powers to cooperate with and assist housing authorities with respect to redevelopment projects that such state public body has pursuant to the Housing Authorities Act, §§ 14-169-201 — 14-169-205, 14-169-207 — 14-169-225, 14-169-227, 14-169-229 — 14-169-240, and 14-169-804, for the purpose of assisting the development or administration of slum clearance and housing projects in the same manner as though the provisions of the Housing Authorities Act were applicable to redevelopment projects undertaken under this subchapter.

**History.** Acts 1945, No. 212, § 4; A.S.A. 1947, § 19-3059.

#### CASE NOTES

#### Relocation Costs.

Relationship between city and housing authority was not a principal-agent stance, and therefore a housing authority, acting independently of the city, would be liable for relocation costs on urban renewal utility lines. Arkansas La. Gas Co. v. City of Little Rock, 256 Ark. 112, 506 S.W.2d 555 (1974).

## 14-169-607. Federal financial aid.

An authority may borrow money or accept contributions from the federal government to assist in its undertaking redevelopment projects. An authority may do any and all things necessary or desirable to secure such financial aid, including obligating itself in any contract with the federal government for annual contributions to convey to the federal government the project to which the contract relates upon the occurrence of a substantial default under it, in the same manner as it may do to secure such aid in connection with slum clearance and housing projects under the provisions of the Housing Authorities Act, §§ 14-169-201 — 14-169-205, 14-169-207 — 14-169-225, 14-169-227, 14-169-229 — 14-169-240, and 14-169-804.

**History.** Acts 1945, No. 212, § 6; A.S.A. 1947, § 19-3061.

## 14-169-608. Bonds deemed legal investments.

Bonds or other obligations issued by a housing authority in connection with a redevelopment project pursuant to this subchapter shall be security for public deposits and legal investments to the same extent and for the same persons, institutions, associations, corporations, and other bodies and officers as bonds or other obligations issued pursuant to the Housing Authorities Act, §§ 14-169-201 — 14-169-205, 14-169-207 — 14-169-225, 14-169-227, 14-169-229 — 14-169-240, and 14-169-804, in connection with the development of slum clearance or housing projects.

**History.** Acts 1945, No. 212, § 7; A.S.A. 1947, § 19-3062.

# 14-169-609. Use of land in project.

(a)(1) The authority may make land in a redevelopment project available for use by private enterprise or public agencies in accordance with the redevelopment plan.

(2) The land may be made available at its use value, which represents the value, whether expressed in terms of rental or capital price, at which the authority determines the land should be made available in order that it may be developed or redeveloped for the purposes specified in the plan.

(b)(1) To assure that land acquired in a redevelopment project is used in accordance with the redevelopment plan, an authority, upon the sale or lease of the land, shall obligate purchasers or lessees to:

(A) Use the land for the purpose designated in the redevelopment

plan;

(B) Begin the building of their improvements within a period of time which the authority fixes as reasonable; and

(C) Comply with such other conditions as are necessary to carry

out the purposes of this subchapter.

(2) Any such obligations by the purchaser shall be covenants and conditions running with the land where the authority so stipulates.

**History.** Acts 1945, No. 212, § 5; A.S.A. 1947, § 19-3060.

## SUBCHAPTER 7 — URBAN RENEWAL GENERALLY

SECTION.	SECTION.
14-169-701. Legislative findings.	14-169-710. Commissioners generally.
14-169-702. Definitions.	14-169-711. Commissioners — Removal.
14-169-703. Urban renewal projects.	14-169-712. Executive director, technical
14-169-704. Urban renewal plan.	experts, agents, etc., of
14-169-705. Powers generally.	agency.
14-169-706. Assistance by municipalities and other public bodies.	14-169-713. Interest of commissioner or employee in project or
14-169-707. Workable program.	property or contract in
14-169-708. Adoption of powers by mu-	connection with project.
nicipality.	connection with project.
14-169-709. Urban renewal agency cre-	

Cross References. Community redevelopment financing, § 14-168-201 et seq.

ated.

Effective Dates. Acts 1957, No. 189, § 4: approved Mar. 8, 1957. Emergency clause provided: "It has been found and it is hereby declared that the redevelopment authorities in the various municipalities of the State of Arkansas do not now have the powers necessary to enable them to adequately meet the demands on them brought about by the immediate need for the elimination of conditions of blight and deterioration through urban renewal, conservation and rehabilitation activities, and to avail themselves of federal aid in this connection. An emergency is therefore declared to exist, rendering this Act necessary for the immediate preservation of the public peace, health and safety, and it shall take effect and be in force from and after the date of its passage."

Acts 1959, No. 119, § 2: Feb. 26, 1959. Emergency clause provided: "It has been found and it is hereby declared that the redevelopment authorities in the various municipalities of the State of Arkansas do not now have the powers necessary to enable them to adequately meet the demands on them brought about by the immediate need for the elimination of conditions of blight and deterioration through urban renewal, conservation and rehabilitation activities, and to avail themselves of federal aid in this connection. An emergency is therefore declared to exist, rendering this Act necessary for the immediate preservation of the public peace, health and safety, and it shall take effect and be in force from and after the date of its passage and approval."

Acts 1961, No. 40, § 5: Feb. 6, 1961. Emergency clause provided: "It has been found and it is hereby declared that there is a great need in some municipalities of the State of Arkansas to authorize them to designate an urban renewal agency or a

housing authority to exercise urban renewal powers as provided herein, in order to meet the demands for the elimination of conditions of slum, blight and deterioration through urban renewal, conservation and rehabilitation activities, and to avail themselves of Federal aid in this connection. An emergency is therefore declared to exist rendering this Act necessary for the immediate preservation of the public peace, health and safety, and it shall take effect and be in force from and after the date of its passage and approval."

## 14-169-701. Legislative findings.

It is found and declared that:

- (1) There exist in municipalities of this state slum, blighted, or deteriorated areas which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of this state, and the findings and declarations heretofore made in § 14-169-601 with respect to slum and blighted areas are affirmed and restated;
- (2) Certain slum, blighted, or deteriorated areas, or portions of them, may require acquisition and clearance, as provided in this subchapter, since the prevailing condition of decay may make impracticable the reclamation of the area by conservation or rehabilitation, but other areas or portions of them, through the means provided in this subchapter, may be susceptible of conservation or rehabilitation in such a manner that the conditions and evils hereinbefore enumerated may be eliminated, remedied, or prevented, and that such blighted areas can be conserved and rehabilitated through appropriate public action and the cooperation and voluntary action of the owners and tenants of property in such areas; and
- (3) All powers conferred by this subchapter are for public uses and purposes for which public money may be expended and such other powers exercised, and the necessity in the public interest for the provisions of this subchapter is declared as a matter of legislative determination. A municipality, to the greatest extent it determines to be feasible in carrying out the provisions of this subchapter, shall afford maximum opportunity, consistent with the sound needs of the municipality as a whole, to the rehabilitation or redevelopment of areas by private enterprise.

**History.** Acts 1945, No. 212, § 12 as added by Acts 1957, No. 189, § 1; A.S.A. 1947, § 19-3063.1.

#### 14-169-702. Definitions.

As used in §§ 14-169-708 — 14-169-713, unless the context otherwise requires:

(1) "Municipality" means any incorporated city or town in the state;

(2) "Undertaken" means if any real property has been purchased for the urban renewal project or a contract for the purchase has been executed or if a housing authority has received any funds for the planning or execution of the project;

(3) "Governing body" means, in the case of a municipality, the

council, or other legislative body of it.

**History.** Acts 1945, No. 212, § 21 as added by Acts 1961, No. 40, § 1; A.S.A. 1947, § 19-3063.10.

**Publisher's Notes.** Acts 1961, No. 40, § 3, provided that the powers and duties

conferred by the act would be in addition and supplemental to the powers conferred by any other law.

## 14-169-703. Urban renewal projects.

(a)(1) In addition to its authority under any section of § 14-169-601 et seq., a housing authority is authorized to plan and undertake urban

renewal projects.

- (2) As used in this subchapter, an urban renewal project may include undertakings and activities for the elimination and for the prevention of the development or spread of slums or blighted, deteriorated, or deteriorating areas and may involve any work or undertaking for such purposes constituting a redevelopment project or any rehabilitation or conservation work, or any combination of such undertaking or work. Such undertaking and work may include:
  - (A) Carrying out plans for a program of voluntary repair and

rehabilitation of buildings or other improvements;

(B) Acquisition of:

(i) A slum area or a deteriorated or deteriorating area; or

(ii) Land which is predominantly open and which, because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community; or

(iii) Open land necessary for sound community growth. The requirement of this subchapter that the area be a slum area or a blighted, deteriorated, or deteriorating area shall not be applicable in

the case of an open land project; or

(iv) Acquisition of any other real property in the urban renewal project area where necessary to eliminate unhealthful, insanitary, or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities, and demolition, removal, or rehabilitation of buildings and improvements;

(C) Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying

out the objectives of the urban renewal project; and

(D) The disposition, for uses in accordance with the objectives of the urban renewal project, of any property, or part of it, acquired in the area of such project. Disposition shall be in the manner prescribed in this subchapter for the disposition of property in a redevelopment project area.

(b) Notwithstanding any other provisions of this subchapter, where the local governing body certifies that an area is in need of redevelopment or rehabilitation as a result of tornado, flood, fire, hurricane, earthquake, storm, or other catastrophe respecting which the Governor has certified the need for disaster assistance under Public Law 81-875 [repealed] or other federal law, the local governing body may approve an urban renewal plan and an urban renewal project with respect to such area without regard to any provisions of this subchapter requiring that the urban renewal area is a slum area, or a blighted, deteriorated, or deteriorating area, or that the urban renewal area be predominantly residential in character or be developed or redeveloped for residential uses.

**History.** Acts 1945, No. 212, § 13 as added by Acts 1957, No. 189, § 1; 1959, No. 119, § 1; A.S.A. 1947, § 19-3063.2. **U.S. Code.** Public Law 81-875, re-

ferred to in this section, was repealed by Public Law 91-606. For present law, see 42 U.S.C. § 5121 et seq.

# 14-169-704. Urban renewal plan.

(a) Any urban renewal project undertaken pursuant to § 14-169-703 shall be undertaken in accordance with an urban renewal plan for the area of the project.

(b) As used in this subchapter, an "urban renewal plan" means a plan as it exists from time to time for an urban renewal project. This plan

shall:

(1) Conform to the general plan for the municipality as a whole; and

(2) Be sufficiently complete to indicate such land acquisition, demolition, and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the area of the urban renewal project, zoning, and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(c) An urban renewal plan shall be prepared and approved pursuant to the same procedure as provided in § 14-169-601 et seq. with respect

to a redevelopment plan.

(d) Where real property acquired by a municipality is to be transferred in accordance with the urban renewal plan, or such parts of the contract or plan as the housing authority may determine, the transfer may be recorded in the land records of the county in such manner as to afford actual or constructive notice of it.

**History.** Acts 1945, No. 212, § 14 as added by Acts 1957, No. 189, § 1; A.S.A. 1947, § 19-3063.3.

## 14-169-705. Powers generally.

(a) A housing authority shall have all the powers necessary or convenient to undertake and carry out urban renewal plans and urban renewal projects, including the authority to acquire and dispose of property, to issue bonds and other obligations, to borrow and accept grants from the federal government or other source, and to exercise the other powers which § 14-169-601 et seq. confers on an authority with respect to redevelopment projects.

(b)(1) In connection with the planning and undertaking of any urban renewal plan or urban renewal project, the authority, the municipality, and all public and private officers, agencies, and bodies shall have all the rights, powers, privileges, and immunities which they have with respect to a redevelopment plan or redevelopment project, in the same manner as though all of the provisions of § 14-169-601 et seq. applicable to a redevelopment plan or redevelopment project were applicable to an urban renewal plan or urban renewal project.

(2)(A) For such purposes:

(i) The word "redevelopment" as used in this subchapter, except in this section and in the definition of "redevelopment project" in § 14-169-604, shall mean "urban renewal";

(ii) The word "slum" and the word "blighted" as used in this subchapter, except in this section and in the definitions in § 14-169-604, shall mean "blighted, deteriorated, or deteriorating"; and

(iii) The finding prescribed in § 14-169-604 with respect to a

blighted area shall not be required.

(B) Any disaster area referred to in § 14-169-703 shall constitute a "blighted area," and this subsection shall not change the corporate name of the authority or the short title of Acts 1945, No. 212, or amend any section of it.

(c) In addition to the surveys and plans which an authority is otherwise authorized to make, an authority is specifically authorized to

make:

(1) Plans for carrying out a program of voluntary repair and reha-

bilitation of buildings and improvements;

(2) Plans for the enforcement of laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements, and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements;

(3) Plans for the relocation of persons, including families, business

concerns, and others displaced by an urban renewal project;

(4) Preliminary plans outlining urban renewal activities for neighborhoods to embrace two (2) or more urban renewal areas; and

(5) Preliminary surveys to determine if the undertaking and carry-

ing out of an urban renewal project are feasible.

(d)(1) The authority is authorized to make relocation payments to, or with respect to, persons including families, business concerns, and others displaced by an urban renewal project, for moving expenses and

losses of property for which reimbursement or compensation is not otherwise made, including the making of such payments financed by

the federal government.

(2) The authority is also authorized to develop, test, and report methods and techniques, and carry out demonstrations and other activities for the prevention and the elimination of slums and urban blight.

**History.** Acts 1945, No. 212, § 15 as added by Acts 1957, No. 189, § 1; A.S.A. 1947, § 19-3063.4.

# 14-169-706. Assistance by municipalities and other public bodies.

(a) Any municipality or other public body is authorized, without limiting any provision in § 14-169-705, to do any and all things necessary to aid and cooperate in the planning and undertaking of any urban renewal project in the area in which the municipality or public body is authorized to act, including the furnishing of such financial and other assistance as the municipality or public body is authorized by § 14-169-601 et seq. to furnish for, or in connection with, a redevelopment plan or redevelopment project.

(b) A housing authority is authorized to delegate to a municipality or other public body any of the powers or functions of the authority with respect to the planning or undertaking of an urban renewal project in the area in which the municipality or public body is authorized to act. The municipality or public body is authorized to carry out or perform

such powers or functions for the authority.

(c) Any public body is authorized to enter into agreements which may extend over any period, notwithstanding any provision or rule of law to the contrary, with any other public bodies respecting action to be taken pursuant to any of the powers granted by this subchapter including the furnishing of funds or other assistance in connection with an urban renewal plan or urban renewal project.

**History.** Acts 1945, No. 212, § 16 as added by Acts 1957, No. 189, § 1; A.S.A. 1947, § 19-3063.5.

# 14-169-707. Workable program.

(a) The governing body of the municipality or such public officer or public body as it may designate is authorized to prepare a workable program. This program may include an official plan of action as it exists from time to time for effectively dealing with the problem of urban slums and blighted, deteriorated, or deteriorating areas within the community and for the establishment and preservation of a well-planned community with well-organized residential neighborhoods of decent homes and suitable living environment for adequate family life, for utilizing appropriate private and public resources to eliminate, and

prevent the development or spread of, slums and urban blight and deterioration, to encourage needed urban rehabilitation, to provide for the redevelopment and renewal of blighted, deteriorated, or slum areas, or to undertake such of these activities or other feasible activities as may be suitably employed to achieve the objectives of such a program.

(b) The powers conferred by this section shall be in addition and

supplemental to the powers conferred by any other law.

**History.** Acts 1945, No. 212, § 17 as No. 189, § 3; A.S.A. 1947, §§ 19-3063.6, added by Acts 1957, No. 189, § 1; 1957, 19-3063.6n.

# 14-169-708. Adoption of powers by municipality.

(a) Notwithstanding any other provisions in this subchapter, it is provided that in any municipality in this state where on January 10, 1961, a housing authority has not been established or a housing authority is established but the authority has not undertaken an urban renewal project, the municipality may, if the local governing body, by resolution, determines such action to be in the public interest, elect to have the same powers with respect to urban renewal and redevelopment that are conferred on a housing authority by §§ 14-169-601 — 14-169-609, 14-169-701, and 14-169-703 — 14-169-707, to be exercised by an urban renewal agency created by § 14-169-709 or by a housing authority if one is authorized for, or subsequently established in, the municipality.

(b) In the event the local governing body makes such determination, the urban renewal agency or the housing authority, as the case may be, shall be vested with all such urban renewal powers as are conferred by

this subchapter.

**History.** Acts 1945, No. 212, § 18 as added by Acts 1961, No. 40, § 1; A.S.A. 1947, § 19-3063.7.

**Publisher's Notes.** As to the supplemental nature of Acts 1961, No. 40, see Publisher's Notes to § 14-169-702.

#### **CASE NOTES**

Constitutionality.

This section does not violate Ark.
Const., Art. 2, §§ 13 and 22, nor U.S.

Const. Amend. 14. Adams v. Sims, 238 Ark. 696, 385 S.W.2d 13 (1964).

# 14-169-709. Urban renewal agency created.

(a) There is created in each municipality in this state, where on January 10, 1961, a housing authority has not been established or a housing authority is established but the housing authority has not undertaken an urban renewal project, a public body politic and corporate to be known as the urban renewal agency of the municipality for the purpose of planning and undertaking urban renewal projects.

(b) The agency shall not transact any business or exercise any powers under this subchapter unless and until the local governing body

shall have adopted a resolution finding that:

(1) One (1) or more slum, blighted, deteriorated, or deteriorating

areas exist in the municipality; and

(2) The rehabilitation, conservation, redevelopment, or a combination thereof, of such areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of the municipality.

**History.** Acts 1945, No. 212, § 19 as added by Acts 1961, No. 40, § 1; A.S.A. 1947, § 19-3063.8.

**Publisher's Notes.** As to the supplemental nature of Acts 1961, No. 40, see Publisher's Notes to § 14-169-702.

#### **CASE NOTES**

**Cited:** Adams v. Sims, 238 Ark. 696, 385 S.W.2d 13 (1964).

# 14-169-710. Commissioners generally.

(a)(1) If an urban renewal agency is authorized to transact business and exercise powers under this subchapter, the mayor shall appoint a board of commissioners of the agency which shall consist of five (5) commissioners.

(2) No commissioner may be an officer or employee of the municipal-

ity for which the agency is created.

- (b)(1) The commissioners who are first appointed shall be designated to serve for terms of one (1), two (2), three (3), four (4), and five (5) years, respectively, from the date of their appointment. Thereafter, commissioners shall be appointed as provided in this section for terms of office of five (5) years, except that any vacancy shall be filled for the unexpired term.
- (2) A commissioner shall hold office until his successor has been designated by the board and approved and confirmed by the municipal council or other municipal governing body.
- (c)(1) When appointed or reappointed, approved, and confirmed, a certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipal council or other governing body.

(2) The certificate shall be conclusive evidence of the due and proper

appointment of the commissioner.

(d) When a vacancy occurs on the board, the commissioners of the agency shall designate a successor to fill the vacancy, subject to approval and confirmation by the municipal council or other municipal governing body.

(e) A commissioner shall receive no compensation for his services but shall be entitled to the necessary expenses, including traveling ex-

penses, incurred in the discharge of his duties.

(f) The mayor shall designate a chairman and vice chairman from among the first commissioners appointed. Thereafter, these offices shall be filled by action of the board.

(g)(1) A majority of the commissioners shall constitute a quorum for the purpose of conducting business, exercising the powers of the agency.

and for all other purposes.

(2) Action may be taken by the agency upon a vote of a majority of the commissioners present unless in any case the bylaws shall require a larger number.

(h) The powers of an agency shall be exercised by its commissioners.

History. Acts 1945, No. 212, § 20 as added by Acts 1961, No. 40, § 1; A.S.A. 1947, § 19-3063.9.

Publisher's Notes. As to the supplemental nature of Acts 1961, No. 40, see Publisher's Notes to § 14-169-702.

#### **CASE NOTES**

Cited: Adams v. Sims, 238 Ark. 696, 385 S.W.2d 13 (1964).

### 14-169-711. Commissioners — Removal.

(a)(1) For inefficiency or neglect of duty or misconduct in office, a commissioner may be removed by the vote of a three-fourths (3/4) majority of the members of the governing body of the municipality.

(2) However, a commissioner shall be removed only after he shall have been given a copy of the charges at least ten (10) days prior to the hearing on them and had an opportunity to be heard in person or by counsel.

(b) In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings on it, shall be filed in the office of the clerk.

**History.** Acts 1945, No. 212, § 20 as added by Acts 1961, No. 40, § 1; A.S.A. 1947, § 19-3063.9.

Publisher's Notes. As to the supplemental nature of Acts 1961, No. 40, see Publisher's Notes to § 14-169-702.

#### CASE NOTES

Cited: Adams v. Sims, 238 Ark. 696, 385 S.W.2d 13 (1964).

# 14-169-712. Executive director, technical experts, agents, etc., of

- (a) An agency may employ an executive director, technical experts, and such other agents and employees, permanent and temporary, as it may require. It may determine their qualifications, duties, and compensation.
- (b) For such legal service as it may require, an agency may employ or retain its own legal staff or its own counsel.

**History.** Acts 1945, No. 212, § 20 as 1947, § 19-3063.9.

Publisher's Notes. As to the suppleadded by Acts 1961, No. 40, § 1; A.S.A. mental nature of Acts 1961, No. 40, see Publisher's Notes to § 14-169-702.

#### CASE NOTES

Cited: Adams v. Sims, 238 Ark. 696, 385 S.W.2d 13 (1964).

# 14-169-713. Interest of commissioner or employee in project or property or contract in connection with project.

(a) No commissioner or employee of an agency shall acquire any interest, direct or indirect, in any urban renewal project nor in any property included or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any urban renewal project.

(b)(1) If any commissioner or employee of an agency owns or controls a direct or indirect interest in any property included or planned to be included in any urban renewal project, he immediately shall disclose it, in writing, to the agency. This disclosure shall be entered upon the

minutes of the agency.

(2) Failure so to disclose such interest shall constitute misconduct in office.

History. Acts 1945, No. 212, § 20 as 1947, § 19-3063.9.

Publisher's Notes. As to the suppleadded by Acts 1961, No. 40, § 1; A.S.A. mental nature of Acts 1961, No. 40, see Publisher's Notes to § 14-169-702.

#### CASE NOTES

Cited: Adams v. Sims, 238 Ark. 696, 385 S.W.2d 13 (1964).

# Subchapter 8 — Acquisition of Property for Urban Renewal

SECTION.

14-169-801. Authority generally.

14-169-802. Power of eminent domain.

14-169-803. Donations by school districts.

SECTION.

14-169-804. Tax exemption of certain property.

Preambles. Acts 1969, No. 223 contained a preamble which read: "Whereas, certain School Districts in the State of Arkansas now own lands and buildings located within the boundaries of Urban Renewal Projects or Neighborhood Development Program areas which are surplus to the needs of such School Districts; and

"Whereas, it may be to the best interest of such School Districts to donate such lands or buildings to the governing body of such Urban Renewal or Neighborhood Development Programs as may exist from time to time...."

Effective Dates. Acts 1937, No. 298, § 31: approved Mar. 23, 1937. Emergency clause provided: "It is determined and declared that unemployment and the existence of unsafe, insanitary and congested dwelling accommodations have produced an alarming economic condition in the State and constitute an emergency and that it is necessary for the preservation of the public peace, health and safety that this act become effective without delay. This act, therefore, shall take effect and be in full force from and after its passage."

Acts 1961, No. 40, § 5: Feb. 6, 1961. Emergency clause provided: "It has been found and it is hereby declared that there is a great need in some municipalities of the State of Arkansas to authorize them to designate an urban renewal agency or a housing authority to exercise urban renewal powers as provided herein, in order to meet the demands for the elimination of conditions of slum, blight and deterioration through urban renewal, conservation and rehabilitation activities, and to avail themselves of Federal aid in this connection. An emergency is therefore declared to exist rendering this Act necessary for the immediate preservation of the public peace, health and safety, and it shall take

effect and be in force from and after the date of its passage and approval."

Acts 1971, No. 542, § 3: Apr. 6, 1971. Emergency clause provided: "Whereas, urban renewal agencies in order to receive federal assistance must be able to acquire real property to carry out plan objectives and, whereas, the power of eminent domain of urban renewal agencies needs to be clarified and affirmed in order that urban renewal plan objectives not be jeopardized, an emergency is hereby declared to exist and this Act being necessary for the immediate protection of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

# 14-169-801. Authority generally.

(a) A housing authority or an urban renewal agency authorized to carry on urban renewal or redevelopment activities in connection with the undertaking and carrying out of an urban renewal project may acquire real property in the urban renewal area, demolish improvements on it, relocate families from it, contract for loans and grants covering the financing of it, and take all appropriate actions, including, but not limited to, the disposition of the property, regardless of the stage of development of the urban renewal plan, if the municipal governing body shall have approved it by resolution.

(b) The municipal governing body may agree to assume the responsibility to bear any loss that may arise as the result of such acquisition in the event the property so acquired is not used for urban renewal purposes because the urban renewal plan for the project is not approved, is amended to omit any of the acquired property, or is aban-

doned for any reason.

**History.** Acts 1961, No. 40, § 2; A.S.A. 1947, § 19-3063.11.

Publisher's Notes. Acts 1961, No. 40, § 3, provided that the powers and duties

conferred by the act would be in addition and supplemental to the powers conferred by any other law.

#### CASE NOTES

Cited: Adams v. Sims, 238 Ark. 696, 385 S.W.2d 13 (1964).

### 14-169-802. Power of eminent domain.

(a)(1)(A) Any urban renewal agency in this state created pursuant to the provisions of §§ 14-169-601 — 14-169-609, 14-169-702, 14-169-708 — 14-169-713, and 14-169-801 shall have the power of eminent domain to carry out urban renewal plan objectives.

(B) The procedure to be followed by the urban renewal agency to acquire property by eminent domain shall be that the board of

commissioners shall, by resolution, declare that:

(i) The acquisition of certain real property is necessary for urban renewal plan objectives which have been approved by the governing body of the municipal government after a public hearing;

(ii) Negotiations for acquisition have been unsuccessful; and

(iii) Suit is authorized to condemn the property.

(2) An urban renewal agency may exercise the power of eminent domain in the manner prescribed by law for condemnation by railroad corporations in this state as prescribed by §§ 18-15-1202 — 18-15-1207 and acts amendatory thereof or supplementary thereto; the urban renewal agency may exercise the power of eminent domain in the manner provided by any other applicable statutory provisions for the exercise of the power of eminent domain.

(b) It is the intent of this section to affirm the power of urban renewal agencies to exercise the power of eminent domain to acquire real

property to carry out urban renewal plan objectives.

**History.** Acts 1971, No. 542, §§ 1, 2; §§ 1 and 2, are also codified as § 18-15-A.S.A. 1947, §§ 19-3075, 19-3076. **Publisher's Notes.** Acts 1971, No. 542,

# 14-169-803. Donations by school districts.

Any school district owning lands and buildings within the boundaries of any existing urban renewal project or neighborhood development program, or within the boundaries of any such project or program that may be constituted in the future, is authorized to donate and dedicate to the governing board of any such urban renewal program or neighborhood development project as may be created any surplus lands or buildings owned by it if the lands or buildings are found by the board of the school district to be surplus to its present needs or the lands and buildings are unsuitable for further use by the school district.

**History.** Acts 1969, No. 223, § 1; A.S.A. 1947, § 19-3063.12.

# 14-169-804. Tax exemption of certain property.

(a) The property of an urban renewal agency used exclusively for public purposes and not for profit is declared to be public property, and this property and the agency shall be exempt from all taxes and special assessments from the state or any public body thereof.

- (b) Any property of an agency used for commercial, business, or industrial purposes shall be assessed and ad valorem taxes paid on it in the manner provided by law for the assessment and payment of taxes on other property. The agency shall furnish the assessor with a certified statement, in writing, of the value at which the property was originally acquired to assist the assessor in arriving at the assessable value of it as provided by law.
- (c) An agency may agree to make payments in lieu of taxes to a state public body for the benefit of a renewal project. However, in no event shall such payments exceed the estimated cost to the state public body of the improvements, services, or facilities to be so furnished.

**History.** Acts 1937, No. 298, § 23; § 1; 1973, No. 193, § 1; A.S.A. 1947, § 19-Pope's Dig., § 10081; Acts 1969, No. 258, 3027.

#### RESEARCH REFERENCES

Ark. L. Rev. Property Tax Exemptions in Arkansas, 4 Ark. L. Rev. 433.

### Subchapter 9 — Participation in Federal Programs

SECTION. 14-169-901. Legislative intent. 14-169-902. Authority generally. SECTION. 14-169-903. Powers supplemental.

Effective Dates. Acts 1975, No. 163, § 4: Feb. 12, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the United States Congress has adopted the Community Development Act of 1974 which provides that the governing bodies of municresponsible shall be community development; and, whereas, cities are already working on their applications on this program and the State law must be clarified in order for Arkansas cities and towns to participate in this federal program. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate protection of the public peace, health and safety and this Act shall take effect and be in full force and effect upon its passage and approval."

Acts 1975 (Extended Sess., 1976), No. 1180, § 4: Feb. 11, 1976. Emergency clause provided: "It is hereby found and determined by the General Assembly that the United States Congress has adopted the Community Development Act of 1974 which provides that the governing bodies

of municipalities and counties shall be responsible for community development; and, whereas, cities are already working on their applications on this program and the State law must be clarified in order for Arkansas counties as well as cities and towns to participate in this federal program. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate protection of the public peace, health and safety and this Act shall take effect and be in full force and effect upon its passage and approval."

Acts 1987, No. 993, § 4: Apr. 14, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case Ricarte v. State, CR 86-31 [290 Ark. 100, 717 S.W.2d 488 (1986)], a question has arisen over the validity of Act 1180 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the

public peace, health and safety, shall be in full force and effect from and after its passage and approval."

### 14-169-901. Legislative intent.

It is the intention of this subchapter to permit municipal and county government in the State of Arkansas to participate fully in the Community Development Act of 1974, specifically, but not limited to, community development activities eligible for assistance in section 105 of it, and to have their governing bodies exercise any and all powers conferred on housing authorities and urban renewal agencies, including, but not limited to:

(1) Eminent domain;

(2) Redevelopment activities;

(3) Housing;

(4) Public housing;

(5) Urban renewal; and

(6) Community development in its broadest sense.

**History.** Acts 1975, No. 163, § 2; 1975 (Extended Sess., 1976), No. 1180, § 2; A.S.A. 1947, § 19-3078; reen. Acts 1987, No. 993, § 2.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 993, § 2. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any

other 1987 legislation and that such other legislation would be controlling in the event of conflict.

U.S. Code. The Community Development Act of 1974, referred to in this section, is codified as 42 U.S.C. § 5301 et seq. Section 105 of that act is codified as 42 U.S.C. § 5305.

# 14-169-902. Authority generally.

Municipalities and counties, acting through their governing bodies, are granted all the powers and authority granted to housing authorities and to urban renewal agencies by §§ 14-169-201 — 14-169-205, 14-169-207 — 14-169-225, 14-169-227, 14-169-229 — 14-169-240, 14-169-601 — 14-169-609, 14-169-701 — 14-169-713, 14-169-801, 14-169-802, and 14-169-804.

**History.** Acts 1975, No. 163, § 1; 1975 (Extended Sess., 1976), No. 1180, § 1; A.S.A. 1947, § 19-3077; reen. Acts 1987, No. 993, § 1.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 993, § 1. Acts

1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

### 14-169-903. Powers supplemental.

- (a) Powers granted to municipalities and counties in this subchapter are supplemental and in addition to all other powers of municipalities and counties.
- (b) Nothing in this subchapter shall be construed as changing, limiting, or otherwise affecting the powers of any existing housing authority, urban renewal agency, or their commissions.

**History.** Acts 1975, No. 163, § 3; 1975 (Extended Sess., 1976), No. 1180, § 3; A.S.A. 1947, § 19-3079; reen. Acts 1987, No. 993, § 3.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 993, § 3. Acts

1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

### Subchapter 10 — Surplus Federal Housing Facilities

SECTION.

14-169-1001. Construction of subchapter.

14-169-1002. Continuing authority. 14-169-1003. Authority to acquire.

14-169-1004. Property outside municipal limits.

14-169-1005. Funds for acquisition.

14-169-1006. Issuance of bonds.

SECTION.

14-169-1007. Statutory mortgage lien.

14-169-1008. Operation, lease, or disposition of facilities.

14-169-1010. Proceeds from sale or lease.

14-169-1010. Operation by local government.

14-169-1011. Limitations on use.

**Preambles.** Acts 1947, No. 250 contained a preamble which read: "Whereas various federal agencies are liquidating certain properties constructed during the war emergency in this and other States; and

"Whereas there now exist in various communities in the State of Arkansas certain of these properties which should remain in this State to complement the industrial growth of said communities; to provide shelter and also for the general public health and welfare of the citizens of this State; and

"Whereas unless the counties and municipalities of Arkansas are authorized and empowered to acquire these properties, many of said properties will be sold and removed from the State to the detriment of the industrial growth of Arkansas..."

Effective Dates. Acts 1947, No. 250, § 13: approved Mar. 18, 1947. Emergency clause provided: "It is hereby found to be a fact that certain communities in this State are in jeopardy of losing housing, other facilities and properties heretofore constructed by agencies of the federal govern-

ment and which are necessary for the present industrial progress and to provide employment for the citizens of Arkansas; the retention of these properties is also necessary to provide shelter and for the health and welfare of the citizens of this State and therefore an emergency is hereby declared to exist and this act shall become effective immediately upon its passage."

Acts 1951, No. 132, § 3: Feb. 23, 1951. Emergency clause provided: "It is hereby found to be a fact that certain communities in this State are in jeopardy of losing housing, other facilities and properties heretofore constructed by agencies of the Federal Government and which are necessary for the present industrial progress and to provide employment for the citizens of Arkansas; the retention of these properties is also necessary to provide shelter and for the health and welfare of the cities of this State and, therefore, an emergency is hereby declared to exist and this act shall be effective immediately upon its passage and approval."

Acts 1970, (Ex. Sess.), No. 55, § 4: Mar. 13, 1970. Emergency clause provided: "It

has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1975, No. 225, § 26: became law without Governor's signature, Feb. 19, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of

this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

#### RESEARCH REFERENCES

Ark. L. Rev. Comment, Municipal Bonds and Amendment 62: Clearing Up a Serbonian Bog, 39 Ark. L. Rev. 499.

# 14-169-1001. Construction of subchapter.

This subchapter shall, without reference to any other statute, be deemed full authority for the acquisition, operation, lease, or sale of any surplus federal property and for the issuance and sale of bonds as provided in this subchapter. This subchapter shall be construed as an additional and alternative method therefor and the financing thereof, and no petition, election, or other or further proceeding in respect to the acquisition of the property or the sale or lease of it after acquisition or the issuance or sale of bonds under this subchapter and no publication of any resolution, ordinance, notice, or proceeding relating to the acquisition of surplus federal property or the sale or lease of it by the county or municipality or the issuance or sale of bonds shall be required except as required by this subchapter, any provisions of other statutes of this state to the contrary notwithstanding.

**History.** Acts 1947, No. 250, § 10; A.S.A. 1947, § 19-3073.

# 14-169-1002. Continuing authority.

Nothing in this subchapter shall be construed to limit, in any manner, the continuing authority of the counties or municipalities to operate, lease, finance, or sell the properties so acquired.

**History.** Acts 1947, No. 250, § 8; 1951, No. 132, § 1; A.S.A. 1947, § 19-3071.

# 14-169-1003. Authority to acquire.

(a) Any county, city, or incorporated town in the State of Arkansas is empowered to execute with the United States, through any of its agencies, contracts for the acquisition of houses, housing facilities, housing projects, sewer and water plants and facilities which are necessary to the operation of the housing facilities, and other real, personal, or mixed properties which have been or may be declared surplus by the federal government.

(b) The contract may provide for outright purchase for cash or on terms or the lease of the properties from the federal government.

**History.** Acts 1947, No. 250, §§ 1, 2; A.S.A. 1947, §§ 19-3064, 19-3065.

# 14-169-1004. Property outside municipal limits.

Cities or incorporated towns may acquire properties under this subchapter located within or without the corporate limits.

**History.** Acts 1947, No. 250, § 9; A.S.A. 1947, § 19-3072.

# 14-169-1005. Funds for acquisition.

(a) Funds for the acquisition of surplus federal properties may be provided from general revenue sources, general mortgage loans, or revenue bonds which may be issued by the county, city, or town to provide funds.

(b)(1) The revenue bonds may bear interest at such rate or rates as provided in the ordinance authorizing their issuance. Bonds so issued

shall:

(A) Be negotiable;

(B) Declare that a statutory mortgage lien shall exist on the property so acquired; and

(C) Be executed by the county judge and county clerk or municipal

mayor and municipal clerk or recorder.

(2) The funds derived from the bonds shall be used exclusively for purposes for which they are issued.

**History.** Acts 1947, No. 250, § 5; 1970 § 14; 1981, No. 425, § 14; A.S.A. 1947, (Ex. Sess.), No. 55, § 1; 1975, No. 225, § 19-3068.

### 14-169-1006. Issuance of bonds.

(a) Bonds provided for in this subchapter shall be issued in such amounts as may be necessary to provide sufficient funds to pay all costs

of acquisition.

(b)(1) Bonds issued under the provisions of this subchapter shall be payable solely from the revenues derived from the operation of the properties acquired. These bonds shall not, in any event, constitute an indebtedness of the county or municipality within the meaning of the constitutional provisions or limitations.

(2) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter and that it does not constitute an indebtedness of the county or municipality within any

constitutional or statutory limitation.

**History.** Acts 1947, No. 250, § 6; A.S.A. **Cross References.** Community redevelopment financing, § 14-168-201 et seq.

### 14-169-1007. Statutory mortgage lien.

(a)(1) There is created a statutory mortgage lien upon the property acquired from the proceeds of bonds authorized to be issued under this subchapter which shall exist in favor of the holder of the bonds and each of them and to and in favor of the holder of the coupons attached to the bonds.

(2) The property acquired shall remain subject to this lien until

payment in full of the principal and interest of the bonds.

- (b)(1) Any holder of bonds issued under provisions of this subchapter may, either at law or in equity, enforce the lien conferred by this section and may, by proper suit, compel the performance of duties of the officials of the issuing county or municipality set forth in this subchapter.
- (2) If there is default in the payment of the principal of or interest upon any of the bonds, any court having jurisdiction may, in any proper action, appoint a receiver to administer the properties on behalf of the county or municipality with power to operate any properties or sell them and to apply the income or proceeds in conformity with this subchapter and the provisions of the mortgage or bond contract.

**History.** Acts 1947, No. 250, § 6; A.S.A. 1947, § 19-3069.

# 14-169-1008. Operation, lease, or disposition of facilities.

Counties, cities, or incorporated towns acquiring properties under this subchapter may operate them, lease them to private industry or operators, or dispose of them through sale.

**History.** Acts 1947, No. 250, § 3; A.S.A. 1947, § 19-3066.

### 14-169-1009. Proceeds from sale or lease.

(a) In the event any county or municipality acquires surplus federal properties and subsequently sells or leases them, the proceeds from the sale or leasing shall first be applied to the payment of the debt created by the acquisition of the property, if any, in accordance with the terms of the mortgage or bond indebtedness.

(b) After payment of this indebtedness, any surplus shall be placed

in the county or municipal general revenue fund.

**History.** Acts 1947, No. 250, § 7; A.S.A. 1947, § 19-3070.

# 14-169-1010. Operation by local government.

Counties or municipalities acquiring property under this subchapter and electing to operate them shall do so on a basis permitting the maintenance and operation, including administrative overhead, insurance, payments in lieu of taxes, amortization of capital costs, debt service, replacement, repairs, and reasonable reserves, without subsidy from any other public funds.

**History.** Acts 1947, No. 250, § 4; A.S.A. 1947, § 19-3067.

# 14-169-1011. Limitations on use.

No property acquired under the provisions of this subchapter shall be used for slum clearance or to provide subsidized housing for persons of low income.

**History.** Acts 1947, No. 250, § 12; A.S.A. 1947, § 19-3074.

### Subchapter 11 — Targeted Neighborhood Enhancement Plan Act

SECTION.	SECTION.
14-169-1101. Title.	neighborhood.
14-169-1102. Construction.	14-169-1106. Contract to participate in a
14-169-1103. Declaration of areas as tar-	targeted neighborhood en-
geted neighborhoods.	hancement plan.
14-169-1104. Legislative finding.	14-169-1107. Foreclosure.
14-169-1105. Requirements for an area to	14-169-1108. Continuation after five
qualify as a targeted	years.

### 14-169-1101. Title.

This subchapter shall be known as the "Targeted Neighborhood Enhancement Plan Act."

History. Acts 1997, No. 320, § 1.

### 14-169-1102. Construction.

This subchapter, being necessary for the public health, safety and welfare, shall be liberally construed to effectuate the purposes of it.

History. Acts 1997, No. 320, § 2.

# 14-169-1103. Declaration of areas as targeted neighborhoods.

Any municipality may, upon fulfillment of the following requirements, declare an area of the municipality as a targeted neighborhood. There is no limit on the number of targeted neighborhoods that a municipality may create. Once a targeted neighborhood area has been designated, and a plan has been implemented, the municipality may take advantage of all the provisions of this subchapter.

History. Acts 1997, No. 320, § 3.

# 14-169-1104. Legislative finding.

It is hereby found by the General Assembly of the State of Arkansas that certain areas within any municipality are either suffering from neglect, abandonment, or are about to become urban blight. This subchapter is necessary to recapture or rehabilitate these neighborhoods, create new homes, rehabilitate existing structures, and maintain residents for a period of several years. Overcoming neighborhood decay and blight fulfills a legitimate public purpose that is essential to the public health, safety and welfare. Therefore, cities are free to designate one (1) or more targeted neighborhoods and to implement a targeted neighborhood enhancement plan in accordance with this subchapter.

History. Acts 1997, No. 320, § 4.

# 14-169-1105. Requirements for an area to qualify as a targeted neighborhood.

Before a municipality may designate an area as a targeted neighbor-

hood, it must first complete each of the following steps:

(a) The municipality must pass a resolution, containing a proposed map, noting its intent to designate a particular area as a targeted neighborhood. The area will be referred to as the (name of area) Targeted Neighborhood Enhancement Plan.

(b) Upon the passage of the resolution, the municipality shall compile a report on the targeted neighborhood which sets forth the following information:

(1) A brief history of the neighborhood including current demo-

graphic information of the residents,

- (2) Information on the deterioration or demolition of housing stock,
  - (3) Information concerning incidents of crime,

(4) The location of existing government resources that could help rehabilitate the neighborhood such as police and fire substations,

schools, playgrounds, or other government centers,

(5) A list of financial institutions that are willing to participate as lending institutions to persons that contract with the city to build, or rehabilitate, and reside in a residential structure within the targeted neighborhood pursuant to the provisions of this subchapter,

(6) A proposed plan to rehabilitate the various blocks of the neighborhood that sets forth, among other things, the resources the municipality is willing to dedicate to ensure the success of the effort. For example, the location of a community-oriented police effort to enable residents to feel more secure would be an example of a resource the municipality is willing to dedicate.

(c) Once this plan is completed, the municipality shall conduct two (2) public hearings at different locations to indicate the nature of the rehabilitation plan and the resources the municipality is willing to dedicate to the rehabilitation effort over the next five (5) years.

(d) After any amendments to the plan the municipality wishes to make as a result of the public hearings, the municipality shall adopt an ordinance that sets forth the plan and sets forth the resources the municipality is able to dedicate to the plan over the period of five (5) years.

History. Acts 1997, No. 320, § 5.

A.C.R.C. Notes. The punctuation in this section is incorrect or does not con-

form to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

# 14-169-1106. Contract to participate in a targeted neighborhood enhancement plan.

(a) A municipality may contract with a person who agrees to participate in a targeted neighborhood enhancement plan. This contract may be for an amount not to exceed twenty percent (20%) of the cost of building or rehabilitating a residential structure within the designated area, exclusive of down payment, provided the person agrees to occupy the structure as the person's principal residence for a continuous period of five (5) years.

(b) A municipality may contract with any person or entity owning and developing property for resale within a targeted neighborhood to provide an amount not to exceed twenty percent (20%) of the cost of

constructing or rehabilitating a residential structure under the follow-

ing conditions:

(1) The person or entity shall demand that the purchaser of the property within the targeted area shall occupy the structure and make it the person's or entity's principal residence for a period of five (5) years; and

(2) Any contracted amount from the municipality will not be provided to the person or entity developing the property for resale until:

(A) The property is sold to a purchaser who then contracts with the municipality to occupy the structure within the targeted area in return for the provision of up to twenty percent (20%) of the cost of construction or rehabilitation, which amount at sale is assigned from the person or entity to the purchaser; and

(B) The new purchaser makes the residential structure the purchaser's principal residence for a period of five (5) years; and

(3) None of the amount provided by the municipality shall be used for down payment.

History. Acts 1997, No. 320, § 6.

### 14-169-1107. Foreclosure.

If an individual, under contract with the municipality, fails to fulfill the commitment to stay within the residential structure the contract period, the municipality, after proper notice, may foreclose on the property.

History. Acts 1997, No. 320, § 7.

# 14-169-1108. Continuation after five years.

If the municipality wishes to continue the program in a particular targeted neighborhood at the conclusion of five (5) years, it may do so by completing the steps set forth in this subchapter, provided that no area may be maintained as a targeted neighborhood for more than an aggregate of fifteen (15) years.

History. Acts 1997, No. 320, § 8.

# **CHAPTER 170**

# TOURISM GENERALLY

#### SUBCHAPTER.

- 1. GENERAL PROVISIONS. [RESERVED.]
- 2. Tourism Revenue Bonds.

### Subchapter 1 — General Provisions

### [Reserved]

### Subchapter 2 — Tourism Revenue Bonds

SECTION.		SECTION.	
14-170-201.	Legislative determination.	14-170-209.	Security for bonds — Special
14-170-202.	Definitions.		obligations.
14-170-203.	Construction.	14-170-210.	Statutory mortgage lien.
14-170-204.	Limitations on authority.	14-170-211.	Default in bond payment.
14-170-205.	Authority generally.	14-170-212.	Bonds — Tax exemption.
14-170-206.	Funding authorized.	14-170-213.	Public investment in bonds.
14-170-207.	Bonds generally.	14-170-214.	Intergovernmental agree-
14-170-208.	Refunding bonds.		ments.

Publisher's Notes. Acts 1985, No. 945 confirmed and continued the authority of municipalities and counties to issue tourism revenue bonds pursuant to Acts 1971, No. 380.

Acts 1985, No. 976 confirmed and continued the authority of municipalities to levy the hotel and restaurant tax and to pledge the proceeds of that tax to tourism bonds by ordinance subject to referendum but without a prior vote of the people. It declared the proceeds of any hotel and restaurant tax pledged to tourism bonds issued under Acts 1971, No. 380 or bonds issued under the Local Government Capital Improvement Revenue Bond Act of 1985, for tourism projects, to be project revenues of the project financed. It further provided that the hotel and restaurant tax is not a "tax" as taxes are normally understood and intended for government support, but is a special levy paid and collected by those persons and entities peculiarly associated with and benefited by tourism. However, since the Local Government Bond Act of 1985, § 14-164-301 et seg. makes specific reference to hotel and restaurant taxes, and the Local Government Capital Improvement Revenue Bond Act of 1985, § 14-164-401 et seq. does not, it is uncertain which of these acts was intended to be referred to by Acts 1985, No. 976.

Cross References. Local Government Bond Act of 1985, § 14-164-301 et seq.

Effective Dates. Acts 1971, No. 380, § 17: Mar. 24, 1971. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly

of the State of Arkansas that it is essential to the continued health, welfare, safety, economic growth and development of the State of Arkansas and its people that municipalities and counties of the State of Arkansas be authorized to secure and develop tourism; that this Act and the implementation of this Act are essential to the accomplishment of these public purposes and to the overall welfare of the State of Arkansas and its people. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1975, No. 225, § 26: became law without Governor's signature, Feb. 19, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this state and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this act. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the

economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

#### RESEARCH REFERENCES

Ark. L. Rev. Comment, Municipal Bonds and Amendment 62: Clearing Up a Serbonian Bog, 39 Ark. L. Rev. 499.

UALR L.J. Legislative Survey, Bonds,

8 UALR L.J. 551.

Note, Revenue Bonds—The Election Requirement: City of Hot Springs v. Creviston, 288 Ark. 286, 705 S.W.2d 415 (1986), 9 UALR L.J. 63.

#### **CASE NOTES**

ANALYSIS

Constitutionality. Approval of bonds.

Constitutionality.

Neither former Ark. Const. Amend. 49 [repealed by Const. Amend. 62, § 11] nor any other constitutional provision permitted the issuance of bonds by municipalities without an election; therefore, this subchapter was held to be invalid when it purported to allow bonds to be issued without an election and for interest in excess of six percent and maturity dates beyond 30 years. Purvis v. City of Little Rock, 282 Ark. 102, 667 S.W.2d 936 (1984); Purvis v. City of Little Rock, 282 Ark. 129a, 669 S.W.2d 900 (1984).

Approval of Bonds.

This subchapter was based upon former Ark. Const. Amend. 49 (repealed by Ark.

Const. Amend. 62, § 11); this amendment did not provide for bonds of any kind to be issued without approval of a majority of the qualified electors voting in an election held for that purpose. Purvis v. City of Little Rock, 282 Ark. 102, 667 S.W.2d 936 (1984).

When a city or county owns a revenueproducing facility of a genuinely public nature, such as a municipal waterworks, bonds may be issued without an election to obtain funds for the operation or expansion of that public facility, the bonds being payable only from revenues derived from the facility. Purvis v. City of Little Rock, 282 Ark. 129a, 669 S.W.2d 900 (1984).

# 14-170-201. Legislative determination.

The tourist industry is legislatively determined to be an industry within the meaning of that term as used in Arkansas Constitution, Amendment 49 [repealed], in that recreation, relaxation, travel, entertainment, cultural development, and other tourism activities of every nature are essential to the health, welfare, safety, progress, and physical and economic well-being of the people. Therefore, this subchapter, and the authorities conferred by it are in implementation of Arkansas Constitution, Amendment 49 [repealed], and necessary for

the full accomplishment of the public purposes contemplated by the people in adopting that amendment.

**History.** Acts 1971, No. 380, § 1; A.S.A. 1947, § 13-1801.

A.C.R.C. Notes. It is questionable whether Ark. Const. Amend. 49 is re-

pealed in whole or whether only those provisions that conflict with Ark. Const. Amend. 62 are repealed by Ark. Const. Amend. 62.

#### **CASE NOTES**

ANALYSIS

Constitutionality. Public purposes.

Constitutionality.

Where a city proposed construction of a convention center-hotel complex and sought to finance its share of the cost through issuance of revenue bonds, an election to approve the bonds was not required by former Ark. Const. Amend. 49 (repealed by Ark. Const. Amend. 62, § 11), which required electoral approval of industrial development bonds, and this section, which made tourism an industry within the meaning of former Ark. Const. Amend. 49, since former Ark. Const. Amend. 49 was obviously an extension of Ark. Const., Art. 16, § 1, as amended by former Ark. Const. Amend. 13 (repealed by Ark. Const. Amend. 62, § 20). Where

the bonds were to be paid out of revenues derived from the convention center, hotel, and related facilities, issuance of the bonds did not violate Ark. Const. Amend. 20, former Ark. Const. Amends. 13 and 49, or Ark. Const., Art. 16, § 1. Purvis v. Hubbell, 273 Ark. 330, 620 S.W.2d 282 (1981).

Public Purposes.

"Tourism bonds" issued by city pursuant to this subchapter in order to finance construction of a privately-owned motel on city property were not valid, where such bonds were not issued for a purely public purpose pursuant to former Ark. Const., Art. 16, § 1, as amended by former Ark. Const. Amend. 13 (repealed by Ark. Const. Amend. 62, § 11), nor was any public election held. Purvis v. City of Little Rock, 282 Ark. 102, 667 S.W.2d 936 (1984).

### 14-170-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Governing body" means the council, board of directors, or city commission of any municipality;

(2) "Municipality" means a city of the first class or a city of the second

class or an incorporated town;

(3) "Equip" means to install or place in, or on, any building or structure equipment of any and every kind, whether or not affixed including, without limitation, building service equipment, fixtures, heating equipment, air conditioning equipment, machinery, furniture,

furnishings, and personal property of every kind;

(4) "Sell" means to sell for such price, in such manner, and upon such terms as the municipality or county shall determine including, without limitation, public or private sale. If public, sale shall be made pursuant to such advertisement as the municipality or county shall determine, and shall be made for cash or credit, payable in lump sum or in installments over such period as the municipality or county shall determine, and, if on credit, with or without interest, and shall be made at such rates as the municipality or county shall determine;

(5) "Lease" means to lease for such rentals, for such periods, and upon such terms and conditions as the municipality or county shall determine and the granting of such purchase options for such prices and upon such terms and conditions as the municipality or county shall determine;

(6) "Construct" means to acquire or build, in whole or in part, in such manner and by such method, including contracting therefor, and if the latter, by negotiation or bidding upon such terms and pursuant to such advertising, as the municipality or county shall determine to be in the public interest and necessary, under the circumstances existing at the time, to accomplish the purposes of and authorities set forth in this

subchapter;

(7) "Facilities" means any real property, personal property, or mixed property of any and every kind that can be used or that will be useful in securing and developing tourism including, without limitation, rights-of-way, roads, streets, pipes, pipelines, reservoirs, utilities, materials, equipment, fixtures, machinery, furniture, furnishings, instrumentalities, buildings, improvements, and other real, personal, or mixed property of every kind.

**History.** Acts 1971, No. 380, § 12; 1981, No. 425, § 21; A.S.A. 1947, § 13-1812.

### 14-170-203. Construction.

This subchapter shall be liberally construed to accomplish its purposes and shall be the sole act and authority necessary to be complied with.

**History.** Acts 1971, No. 380, § 16; A.S.A. 1947, § 13-1814.

# 14-170-204. Limitations on authority.

Nothing in this subchapter shall be construed to authorize any municipality or county to sell bonds or use the proceeds of them to purchase or condemn a utility plant or condemn a utility plant or distribution system owned or operated by a regulated public utility.

**History.** Acts 1971, No. 380, § 15; A.S.A. 1947, § 13-1813.

# 14-170-205. Authority generally.

Any municipality and any county in this state is authorized to own, acquire, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, contract concerning, or otherwise deal in or dispose of any lands, buildings, improvement, or facilities of any and every nature whatever necessary or desirable for the securing and developing of recreation, relaxation, travel, entertainment, cultural development,

and other tourism activities of every nature, which are collectively referred to as "tourism", within or near the municipality or within the county including, without limitation, hotels, motels, inns, lodges, folk-lore facilities, cultural development facilities, convention facilities, restaurants in connection with other facilities for the securing and developing of tourism, parks, scenic roadways and walkways, transportation facilities, parking facilities, tourist information and assistance centers, recreation areas, and other facilities of any nature whatever that can be used to secure and develop tourism and to thereby stimulate and enhance the economic growth and well-being of the municipality or county and the people. Any such undertaking, or combination of these undertakings, may be referred to as a "tourism project."

**History.** Acts 1971, No. 380, § 2; A.S.A. 1947, § 13-1802.

# 14-170-206. Funding authorized.

- (a) Municipalities and counties are authorized to use any available revenues for the accomplishment of tourism projects, either alone or together with other available funds and revenues. They may issue bonds, as authorized in this subchapter, for the accomplishment of tourism projects, either alone or together with other available funds and revenues.
- (b) Bonds may be issued in such principal amount as shall be sufficient to pay the cost of accomplishing the tourism project involved, the cost of issuing bonds, the amount necessary for a reserve, if deemed desirable, the amount necessary to provide for debt service on the bonds until revenues for the payment of them are available, and any other costs and expenditures of whatever nature incidental to the accomplishment of the tourism project involved.

**History.** Acts 1971, No. 380, § 3; A.S.A. 1947, § 13-1803.

# 14-170-207. Bonds generally.

(a)(1) The issuance of bonds shall be by ordinance of the municipality or order of the county court.

(2) As the ordinance or order authorizing their issuance may provide, the bonds may:

(A) Be coupon bonds payable to bearer, but subject to registration as to principal or as to principal and interest;

(B) Be exchangeable for bonds of another denomination;

(C) Be in such form and denominations;

(D) Be made payable at such place or places within or without the state;

(E) Be issued in one (1) or more series;

(F) Bear such date or dates;

- (G) Mature at such time or times, not exceeding forty (40) years from their respective dates;
  - (H) Bear interest at such rate or rates;

(I) Be payable in such medium of payment;

(J) Be subject to such terms of redemption; and

- (K) Contain such terms, covenants, and conditions including, without limitation, those pertaining to:
  - (i) The custody and application of the proceeds of the bonds;

(ii) The collection and disposition of revenues;

- (iii) The maintenance and investment of various funds and reserves;
  - (iv) The nature and extent of the security and pledging of reve-

nues;

- (v) The rights, duties, and obligations of the municipality or county and the trustee for the holders and registered owners of the bonds; and
  - (vi) The rights of the holders and registered owners of the bonds.
- (3) There may be successive bond issues for the purpose of financing the same tourism project. There may also be successive bond issues for financing the cost of reconstructing, replacing, constructing additions to, extending, improving, and equipping tourism projects already in existence, whether or not originally financed by bonds issued under this subchapter, with each successive issue to be authorized as provided by this subchapter.

(4) Priority between and among issues and successive issues as to security of the pledge of revenues and lien on the tourism project facilities involved may be controlled by the ordinance or order autho-

rizing the issuance of bonds under this subchapter.

(5) Subject to the provisions of this section pertaining to registration, the bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas.

(b)(1)(A) The ordinance or order authorizing the bonds may provide for the execution by the municipality or county of an indenture which defines the right of the holders and registered owners of the bonds and provides for the appointment of a trustee for the holders and registered owners of the bonds.

(B) The indenture may control the priority between successive issues and may contain any other terms, covenants, and conditions that are deemed desirable, including, without limitation, those per-

taining to:

- (i) The custody and application of the proceeds of the bonds;
- (ii) The maintaining of rates and charges;
- (iii) The collection and disposition of revenues;
- (iv) The maintenance of various funds and reserves;
- (v) The nature and extent of the security and pledging of revenues; and
- (vi) The rights, duties, and obligations of the municipality and the trustee and the rights of the holders and registered owners of the bonds.

(2) It shall not be necessary for the municipality to publish any indenture or any lease if the ordinance authorizing an indenture or lease is published as required by law governing the publication of ordinances of a municipality and the ordinance advises that a copy of the indenture or a copy of the lease, as the case may be, is on file in the office of the clerk or recorder of the municipality for inspection by any interested person, and the copy of the indenture or the copy of the lease, as the case may be, is actually filed with the clerk or recorder of the municipality.

(c) The bonds may be sold for such price, including, without limitation, sale at a discount, and in such manner as the municipality or

county may determine by ordinance or county court order.

(d)(1)(A) The bonds shall be executed by the mayor and the city clerk or recorder of the municipality or the county judge and county clerk of the county, with either the facsimile or manual signature of the mayor or county judge, but with the manual signature of the clerk or recorder and of the county clerk.

(B) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of the bonds or coupons, their signatures shall, nevertheless, be valid

and sufficient for all purposes.

(2) The coupons attached to the bonds may be executed by the facsimile signature of the mayor of the municipality or the county judge of the county.

**History.** Acts 1971, No. 380, § 4; 1975, No. 225, § 22; 1981, No. 425, § 21; A.S.A. 1947, § 13-1804.

#### CASE NOTES

Analysis

Constitutionality.
Convention center-hotel complex.
Motels.

Constitutionality.

Neither former Ark. Const. Amend. 49 (repealed by Ark. Const. Amend. 62, § 11) nor any other constitutional provision permitted the issuance of bonds by municipalities without an election; therefore, this section was held to be invalid when it purported to allow bonds to be issued without an election and for interest in excess of six percent and maturity dates beyond 30 years. Purvis v. City of Little Rock, 282 Ark. 102, 667 S.W.2d 936 (1984).

#### Convention Center-Hotel Complex.

Where a city proposed the construction of a convention center-hotel complex, to be

financed by the issuance of revenue bonds, without an election, with payment of the bonds from five sources: (1) a two percent gross receipts tax imposed by § 26-75-602, (2) revenues received by the city from the convention centers, (3) revenues received from the convention parking facilities, (4) rent paid to the city by the developers, and (5) state turnback revenues based on the revenues derived from the convention facilities pursuant to § 14-171-201 et seq., the construction of this project by the city through the issuance of revenue bonds by the city was not violative of Ark. Const., Art. 16, § 1, as amended by former Ark. Const. Amend. 13 (repealed by Ark. Const. Amend. 62, § 11), since the promoters were building the hotel at their own expense, substantially contributing to the costs of the convention center, paying an annual rental, and the title to the hotel and convention center

were being vested in the city. Purvis v. Hubbell, 273 Ark. 330, 620 S.W.2d 282 (1981).

#### Motels.

"Tourism bonds" issued by city pursuant to this section in order to finance construction of a privately owned motel on city property were not valid, where such bonds were not issued for a purely public purpose pursuant to Ark. Const., Art. 16, § 1, as amended by former Ark. Const. Amend. 13 (repealed by Ark. Const. Amend. 62, § 11), nor was any public election held. Purvis v. Citý of Little Rock, 282 Ark. 102, 667 S.W.2d 936 (1984).

# 14-170-208. Refunding bonds.

(a)(1) Bonds may be issued under this subchapter for the purpose of refunding any obligations issued under this subchapter.

(2) Refunding bonds may be combined with bonds issued under the

provisions of § 14-170-207 into a single issue.

(b)(1) When bonds are issued under this section for refunding purposes, the bonds may either be sold or delivered in exchange for the outstanding obligations.

(2) If sold, the proceeds may be either applied to the payment of the obligations refunded or deposited in escrow for the retirement of them.

- (c)(1) All bonds issued under this section shall in all respects be authorized, issued, and secured in the manner provided for other bonds issued under this subchapter and shall have all the attributes of those bonds.
- (2) The ordinance or order under which refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the obligations refunded by them.

**History.** Acts 1971, No. 380, § 6; A.S.A. 1947, § 13-1806.

# 14-170-209. Security for bonds — Special obligations.

- (a)(1) The bonds issued under this subchapter shall not be general obligations of the municipality or county but shall be special obligations. In no event shall the bonds constitute an indebtedness of the municipality or county within the meaning of any constitutional or statutory limitation.
- (2) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter and that it does not constitute an indebtedness of the municipality or county within any constitutional or statutory limitation.
- (b) The principal of, and interest on, the bonds shall be secured by a pledge of, and shall be payable from, revenues derived from the tourism project acquired, constructed, reconstructed, extended, or improved, in whole or in part, with the proceeds of the bonds.

#### CASE NOTES

Constitutionality.

Where a city planned the construction of a hotel and convention center complex through the issuance of city revenue bonds, the setting of the interest rate at 10 percent and the term of the bonds at 40 years did not violate former Ark. Const. Amend. 49 (repealed by Ark. Const. Amend. 62, § 11), since this section spe-

cifically provides that tourism revenue bonds are special obligations of the city, rather than general obligations, so that they in no event constituted an indebtedness of the city; thus, the bonds did not arise under the amendment and the interest rate and term were constitutional. Purvis v. Hubbell, 273 Ark. 330, 620 S.W.2d 282 (1981).

# 14-170-210. Statutory mortgage lien.

(a)(1) Subject to the provisions of this section, there shall exist a statutory mortgage lien upon the land, buildings, or facilities acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of bonds issued under this subchapter which shall exist in favor of the holders and registered owners of the bonds, and in favor of the holders of the coupons attached to the bonds.

(2) The land, buildings, or facilities shall remain subject to the statutory mortgage lien until payment in full of the principal of, and

interest on, the bonds.

(b)(1) Anything in this section to the contrary notwithstanding, the ordinance, order, or indenture referred to in § 14-170-207 may impose a foreclosable mortgage lien upon the land, buildings, or facilities acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of bonds issued under this subchapter.

(2) The nature and extent of the mortgage lien may be controlled by the ordinance, order, or indenture including, without limitation, provisions pertaining to the release of all, or part of, the land, buildings, or facilities from the mortgage lien and the priority of the mortgage lien in the event of successive bond issues as authorized by § 14-170-207.

(c) Subject to such terms, conditions, and restrictions as may be contained in the ordinance, order, or indenture authorizing or securing the bonds, any holder or registered owner of bonds issued under the provisions of this subchapter, or of any coupon attached to them, may, either at law or in equity, enforce the mortgage lien and may, by proper suit, compel the performance of the duties of the officials of the issuing municipality or county set forth in this subchapter and set forth in any ordinance, order, or indenture authorizing or securing the bonds.

(d) References in this subchapter to mortgage lien shall include, and mean, security interest in any personal property embodied in a tourism project acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of bonds issued under

this subchapter.

# 14-170-211. Default in bond payment.

(a)(1)(A) In the event of a default in the payment of the principal of, or interest on, any bonds issued under this subchapter, any court having jurisdiction may appoint a receiver to take charge of the land, buildings, or facilities acquired, constructed, reconstructed, extended, equipped, or improved, in whole or in part, with the proceeds of bonds issued under this subchapter, upon which land, buildings, or facilities, or any part of them, there is a mortgage lien securing the bonds with reference to which there is such a default in the payment of principal or interest.

(B) The receiver shall have the power to operate and maintain the land, buildings, or facilities and to charge and collect rates or rents sufficient to provide for the payment of the principal of, and interest on, the bonds, after providing for the payment of all costs of receivership and operating expenses of the land, buildings, or facilities, and to apply the income and revenues derived from the land, buildings, or facilities in conformity with this subchapter and the ordinance, order, or indenture authorizing or securing the bonds.

(2) When the default has been cured, the receivership shall be ended

and the properties returned to the municipality or county.

(b) The relief afforded by this section shall be construed to be in addition and supplemental to the remedies that may be afforded to the trustee for the holders and registered owners of the bonds in the ordinance or indenture authorizing or securing the bonds, and shall be so granted and administered as to accord full recognition to priority rights of holders and registered owners of the bonds as to the pledge of revenues from, and the mortgage lien on, lands, buildings, or facilities as specified in and fixed by the ordinance, order, or indenture authorizing or securing successive bond issues.

**History.** Acts 1971, No. 380, § 8; A.S.A. 1947, § 13-1808.

# 14-170-212. Bonds — Tax exemption.

(a) Bonds issued under this subchapter shall be exempt from all state, county, and municipal taxes.

(b) This exemption includes income and inheritance taxes.

**History.** Acts 1971, No. 380, § 9; A.S.A. 1947, § 13-1809.

#### **CASE NOTES**

#### Motels.

Although the attraction of tourists may in some situations have constituted an industry within former Ark. Const. Amend. 49 (repealed by Ark. Const.

Amend. 62, § 11), the Supreme Court was unwilling to attempt to define "tourism" as an industry, beyond the holding that a motel did not qualify for a tax-exempt bond issue under former Ark. Const.

Amend. 49 and this subchapter. Purvis v. City of Little Rock, 282 Ark. 129a, 669 S.W.2d 900 (1984).

### 14-170-213. Public investment in bonds.

(a) Any municipality, or any board, commission, or other authority duly established by ordinance of any municipality, or the board of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any such municipality, or the board of trustees of any retirement system created by the General Assembly, may, in its discretion, invest any of its funds not immediately needed for its purposes in bonds issued under the provisions of this subchapter.

(b) Bonds issued under the provisions of this subchapter shall be

eligible to secure the deposit of public funds.

**History.** Acts 1971, No. 380, § 10; A.S.A. 1947, § 13-1810.

# 14-170-214. Intergovernmental agreements.

Municipalities and counties are authorized to enter into and carry out appropriate agreements with any agency or political subdivision of the federal government or of the State of Arkansas pertaining to the accomplishment of the purposes authorized by this subchapter, including, without limitation, loan agreements for the borrowing of money and agreements pertaining to grants.

**History.** Acts 1971, No. 380, § 11; A.S.A. 1947, § 13-1811.

# CHAPTER 171

# TOURIST FACILITIES

#### SUBCHAPTER.

- 1. General Provisions.
- 2. CITY-COUNTY TOURIST MEETING AND ENTERTAINMENT FACILITIES.

**A.C.R.C.** Notes. References to "this subchapter 1 which was enacted subsechapter" in subchapter 2 may not apply to quently.

### Subchapter 1 — General Provisions

SECTION.

14-171-101. Restrictions on funds.

**A.C.R.C.** Notes. References to "this this subchapter which was enacted subsechapter" in subchapter 2 may not apply to quently.

### 14-171-101. Restrictions on funds.

Nothing in § 22-3-1009 shall prohibit the use of funds provided under the City-County Tourist Meeting and Entertainment Facilities Assistance Law, § 14-171-201 et seq., for eligible facilities as defined in § 14-171-203(7).

**History.** Acts 1995, No. 185, § 3; 1995, No. 269, § 3.

# Subchapter 2 — City-County Tourist Meeting and Entertainment Facilities

SECTION.		SECTION.	
14-171-201.			ties Aid Fund — Creation.
14-171-202.	Legislative determinations.	14-171-212.	City-County Tourist Facili-
14-171-203.	Definitions.		ties Aid Fund — Transfer
14-171-204.	Application for assistance		of funds.
	generally.	14-171-213.	City-County Tourist Facili-
14-171-205.	Application — Contents.		ties Aid Fund — Disburse-
14-171-206.	Application — Review.		ments.
14-171-207.	Application — Hearings.	14-171-914	City-County Tourist Facili-
14-171-208.	Application — Determination of eligibility.	14-171-214.	ties Aid Fund — Accounting.
14-171-209.	Determination of additional	14 171 015	2
	state sales and income tax		Payments to localities.
	revenues from facility.		Suspension of local tax.
14-171-210.	State assistance.	14-171-217.	Pledge of state revenues pro-
	City-County Tourist Facili-		hibited.

Effective Dates. Acts 1977, No. 763, § 9: Mar. 24, 1977. Emergency clause provided: "It is hereby found and declared that the lack of adequate Tourist Meeting Facilities and Tourist Entertainment Facilities is hampering the development of the Tourist Industry in this State and that this Act is necessary to provide financing for adequate Tourist Meeting Facilities and Tourist Entertainment Facilities. Therefore, an emergency is declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force from and after its passage and approval."

Acts 1979, No. 212, § 8: Feb. 23, 1979. Emergency clause provided: "It is hereby found and declared that the lack of adequate Tourist Meeting Facilities and Tourist Entertainment Facilities is hampering the development of the tourist industry in this State and that this Act is immediately necessary to provide adequate financing for such facilities through the issuance of either General Obligation Bonds or Revenue Bonds. Therefore, an emergency is declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force from and after its passage and approval."

Acts 1979, No. 569, § 7: Mar. 26, 1979. Emergency clause provided: "It is hereby found and declared that the economic burden of Cities and Counties which have heretofore invested in Tourist Meeting Facilities and Tourist Entertainment Facilities is creating economic hardship to the affected Cities and Counties and that this

Act is immediately necessary to provide assistance to such Cities and Counties, an emergency is declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force from and after its passage and approval."

Acts 1983, No. 356, § 3: Mar. 8, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly that the immediate passage and approval of this Act is necessary to properly effectuate the purposes and intent of the City-County Tourist Meeting and Facilities Assistance Law. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the public peace, health and safety, shall take effect and be in force from and after its passage and approval."

Acts 1995, No. 1156, § 13: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the

effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1997, No. 753, § 13: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1,

#### RESEARCH REFERENCES

Ark. L. Rev. Comment, Municipal Bonds and Amendment 62: Clearing Up a Serbonian Bog, 39 Ark. L. Rev. 499.

#### CASE NOTES

#### Constitutionality.

Where a city proposed the construction of a convention center-hotel complex, to be financed by the issuance of revenue bonds, without an election, pursuant to § 14-170-201 et seq., with payment of the bonds from five sources: (1) a two percent gross receipts tax imposed by § 26-75-602, (2) revenues received by the city from the convention centers, (3) revenues received from the convention parking facilities, (4) rent paid to the city by the developers, and (5) state turnback revenues based on the revenues derived from the convention facilities pursuant to this

subchapter, the construction of this project by the city through the issuance of revenue bonds by the city was not violative of Ark. Const., Art. 16, § 1, as amended by former Ark. Const. Amend. 13 (repealed by Ark. Const. Amend. 62, § 11), since the promoters were building the hotel at their own expense, substantially contributing to the costs of the convention center, paying an annual rental, and the title to the hotel and convention center were being vested in the city. Purvis v. Hubbell, 273 Ark. 330, 620 S.W.2d 282 (1981).

### 14-171-201. Title.

This subchapter may be cited as the "City-County Tourist Meeting and Entertainment Facilities Assistance Law."

**History.** Acts 1977, No. 763, § 1; A.S.A. 1947, § 19-5501.

#### **CASE NOTES**

**Cited:** Purvis v. Hubbell, 273 Ark. 330, 620 S.W.2d 282 (1981).

# 14-171-202. Legislative determinations.

It is found and determined that:

(1) The tourist meeting and entertainment industry is an industry within the meaning of that term as used in Arkansas Constitution, Amendments 18 and 49 [repealed];

(2) Tourist meeting facilities are useful in advertising cities within

the meaning of Arkansas Constitution, Amendment 18;

(3) The tourist industry is essential to the health, welfare, progress, and physical and economic well-being of the people of this state;

(4) Adequate facilities are essential to the proper development of the

tourist industry:

(5) Adequate tourist meeting facilities and tourist entertainment facilities are often not self-supporting so as to permit their financing with revenue bonds, but are economic generators that stimulate business and commerce in the affected locality through increasing the demand for goods and services furnished by restaurants, hotels, places of entertainment, and other stores, shops, and establishments, and, as a consequence, generate additional state and local tax collections;

(6) Tourist meeting facilities and tourist entertainment facilities have a need for partial return of new generated tax moneys after repayment of the original bonds or construction cost in order to maintain, market, and operate such facilities as viable venues for

attracting tourists; and

(7) It is in the interest of both the state and its cities and counties for the state to assist any city or county in financing construction of and expenditures relating to tourist meeting facilities and tourist entertainment facilities by continuing to pay to the city or county a portion of the increased state sales tax revenues and state income tax revenues attributable to them, as is provided in this subchapter.

**History.** Acts 1977, No. 763, § 2; A.S.A. 1947, § 19-5502; Acts 1993, No. 164, §§ 1, 2; 1995, No. 1156, § 2; 1997, No. 753, § 3.

**A.C.R.C.** Notes. It is questionable whether Ark. Const. Amend. 49 is repealed in whole or whether only those provisions that conflict with Ark. Const.

Amend. 62 are repealed by Ark. Const. Amend. 62.

Amendments. The 1993 amendment inserted present (6) and redesignated former (6) as (7); and, in (7), inserted "construction of and expenditures relating to", substituted "continuing to pay" for

"paying", and inserted "or the facilities operating board of eligible facilities."

The 1995 amendment deleted "or the facilities operating board of eligible facili-

ties" preceding "a portion" in (7).

The 1997 amendment made no change in (7).

### 14-171-203. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Amendment 13", "Amendment 17", "Amendment 18", and "Amendment 49" mean, respectively, the amendments to the Constitution of the State of Arkansas so numbered;

(2) "Bonds" means either general obligation bonds or revenue bonds

or a combination of them;

(3) "City" means any city of the first or second class in this state and also means the War Memorial Stadium Commission, Arkansas Livestock and Poultry Commission, the Arkansas State Fair and Livestock Show Association, and the Four States' Fair in Texarkana, Arkansas.;'

(4) "County" means any county in this state;

(5) "Delegate" means a person attending a national or regional meeting;

(6) "Delegate days" means the total number of delegates attending a national or regional meeting times the average number of days of

attendance by each delegate;

(7) "Eligible facilities" means any publicly owned tourist meeting facilities or tourist entertainment facilities acquired or completed, or substantially reconstructed or expanded, after December 31, 1974 and also means War Memorial Stadium the facilities on the Arkansas State Fairgrounds in Little Rock, Arkansas, and the facilities of the Four States' Fair in Texarkana, Arkansas. Manufacturing facilities are specifically excluded from this definition;"

(8) "Expenditures" means capital improvements, maintenance, facil-

ity advertising, and facility event inducement;

(9) [Repealed].

(10) "Facility advertising" means moneys used to advertise, promote, and market the facility for regional and national events;

(11) "Facility event inducement" means moneys used to benefit and

to operate regional and national events held in the facility;

(12) "General obligation bonds" means bonds issued by a city or county under Arkansas Constitution, Amendments 13 [replealed], 17 [repealed], 18, and 49 [repealed] or similar constitutional provisions, payable from the proceeds of an ad valorem tax;

(13) "National or regional meeting" means a meeting, show, or other function which is intended primarily for delegates from outside this

state;

(14) [Repealed].

(15) "Revenue bonds" means bonds issued by a city or county which are limited or special rather than general obligations of the issuer and which are not payable from the proceeds of an ad valorem tax;

(16) "State income tax" means the Arkansas state income tax levied and being collected pursuant to the Income Tax Act of 1929;

(17) "State sales tax" means the Arkansas gross receipts tax levied and being collected pursuant to the Arkansas Gross Receipts Tax Act of 1941:

(18) "Tourist entertainment facilities" means any real, personal, or mixed property necessary or desirable in connection with the security

and developing of sports facilities;

(19) "Tourist meeting facilities" means any real, personal, or mixed property necessary or desirable in connection with a convention or meeting center, including, without limitation, auditoriums, exhibition halls, facilities for food preparation and serving, parking facilities, and administrative offices in connection with them.

**History.** Acts 1977, No. 763, § 3; 1979, No. 212, § 2; A.S.A. 1947, § 19-5503; Acts 1991, No. 647, § 1; 1993, No. 164, § 3; 1995, No. 185, §§ 1, 2; 1995, No. 269, §§ 1, 2; 1995, No. 1156, § 3; 1997, No. 753, § 2.

**A.C.R.C.** Notes. It is questionable whether Ark. Const. Amends. 13, 17, and 49 are repealed in whole or whether only those provisions that conflict with Ark. Const. Amend. 62 are repealed by Ark. Const. Amend. 62.

The Income Tax Act of 1929, referred to in this section, is codified as §§ 26-51-101, 26-51-102, 26-51-104 — 26-51-107, 26-51-201 — 26-51-204, 26-51-303, 26-51-401 — 26-51-406, 26-51-410, 26-51-411, 26-51-415 — 26-51-417, 26-51-423 — 26-51-431, 26-51-501, 26-51-801 — 26-51-804, 26-51-806 — 26-51-809, and 26-51-811 — 26-51-814.

The Arkansas Gross Receipts Tax Act of 1941, referred to in this section, is codified as §§ 26-52-101 — 26-52-107, 26-52-201 — 26-52-208, 26-52-301, 26-52-303, 26-52-306, 26-52-307, 26-52-401, 26-52-402, 26-52-501 — 26-52-503, 26-52-508, and 26-52-510.

Acts 1979, No. 212, § 1, provided: "The General Assembly has found and hereby declares that the present provisions of Act No. 763 of the Acts of Arkansas of 1977 ('Act No. 763') are unduly restrictive in limiting state assistance to cities and counties issuing bonds to finance tourist entertainment facilities and tourist meeting facilities to assist in the payment of debt service on general obligation bonds of the issuer, that cities and counties can

also finance tourist entertainment facilities and tourist meeting facilities with revenue bonds, and that in order to accomplish the public purpose and legislative intent of Act No. 763 it is necessary to amend Act No. 763 to authorize state assistance in the payment of debt service on such revenue bonds."

Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation in (3) and (7).

Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to make the following corrections: (1) The incorrect, additional period following the phrase "Texarkana, Arkansas" in subdivision (3) could not be deleted. (2) Needed commas following "1974" and "Stadium" in subdivision (7) could not be inserted. (3) The single quotation mark (') at the end of subsection (3) and single and double quotations marks ('") in subsection (7) could not be removed.

Amendments. The 1993 amendment inserted present (8) — (11) and (14) and redesignated the remaining subdivisions accordingly.

The 1995 amendment by identical acts Nos. 185 and 269 added the language beginning "and also means" in the first sentence in (3) and (7).

The 1995 amendment by No. 1156 re-

pealed former (9) and (14).

The 1997 amendment added "and the Four States' Fair in Texarkana, Arkansas" in (3); and, in (7), added "and the facilities of the Four States' Fair in Texarkana, Arkansas" and made punctuation changes.

#### CASE NOTES

Cited: Purvis v. Hubbell, 273 Ark. 330, 620 S.W.2d 282 (1981).

# 14-171-204. Application for assistance generally.

Any city or county that has acquired or constructed, or which desires to acquire or construct, eligible facilities may apply to the State Board of Finance for state assistance in paying not more than eighty percent (80%) of the debt service requirements, including principal, interest, and trustees' and paying agents' fees and charges, on bonds issued or to be issued by the city or county to finance all, or a portion of, the eligible facilities or eighty percent (80%) of any amounts theretofore expended by the city or county from its revenues to acquire or construct eligible facilities increased by an annual rate of interest equal to the lowest average rate paid by the affected city or county on its then lastpreceding issue of general obligation bonds until repayment in full of the investment of the city or county in eligible facilities with such assumed accruedd and accruing interest. When the bonds issued to finance the eligible facilities or the investment of the city or county of its revenue in the eligible facilities has been repaid with accrued and accruing interest, the city or county may continue to apply to the State Board of Finance for continuing state assistance in paying expenditures relating to the eligible facilities.

**History.** Acts 1977, No. 763, § 4; 1979, No. 212, § 3; 1979, No. 569, § 2; A.S.A. 1947, § 19-5504; Acts 1993, No. 164, § 4.

Publisher's Notes. Acts 1979, No. 569, § 1, provided: "The General Assembly has found and declared that the provisions of Acts No. 763 of the Acts of Arkansas of 1977 are unduly restrictive in limiting state assistance to cities and counties issuing bonds to finance tourist entertainment facilities and tourist meeting facilities to assist in the payment of debt service on general obligation bonds of the issuer, and that cities and counties should also finance tourist entertainment facilities and tourist meeting facilities with revenue bonds. The General Assembly further finds and hereby declares that the

investment by cities and counties in financing acquisition and construction of tourist entertainment facilities and tourist meeting facilities from other revenues available to them have placed substantial economic burdens upon such cities and counties which it is the purpose and intention of this amendment to alleviate, in part, by authorizing state assistance in the repayment of a portion of the amounts so invested by such cities and counties in addition to the assistance provided by Act No. 212 of the Acts of Arkansas of 1979."

Amendments. The 1993 amendment added the second sentence, and in the first sentence substituted "trustees'" for "trustee's," "agents'" for "agent's," and "last-preceding" for "last preceding."

#### **CASE NOTES**

Cited: Purvis v. Hubbell, 273 Ark. 330, 620 S.W.2d 282 (1981).

# 14-171-205. Application — Contents.

- (a) All applications for state assistance under this subchapter shall be in writing and shall describe:
  - (1) The eligible facilities;

(2) The need therefor;

(3) The financing thereof;

(4) The estimated number of delegates or visitors that will patronize the eligible facilities;

(5) Their estimated expenditures;

- (6) The estimated investment multiplier is the number of times such expenditures by delegates or visitors will be respent on additional goods and services in the state:
- (7) The estimated additional state sales tax and state income tax revenues to be derived as a result of the expenditures, taking into consideration the investment multiplier;

(8) The expected additional expense, if any, to the state; and

(9) Any other matters prescribed by the State Board of Finance.

(b) The descriptions required by subdivisions (a)(4), (5), and (7) of this section shall be supported by statistical surveys satisfactory to the State Board of Finance.

History. Acts 1977, No. 763, § 4; A.S.A. intent of Acts 1979, No. 569, regarding 1947, § 19-5504. Acts 1977, No. 763, see "Publisher's Publisher's Notes." As to legislative Notes" to § 14-171-204.

#### CASE NOTES

**Cited:** Purvis v. Hubbell, 273 Ark. 330, 620 S.W.2d 282 (1981).

# 14-171-206. Application — Review.

Upon receipt of an application for state assistance, the State Board of Finance shall proceed promptly to review it and shall notify the applicant of any additional information needed for a proper evaluation of the application.

History. Acts 1977, No. 763, § 4; A.S.A. intent of Acts 1979, No. 569, regarding 1947, § 19-5504. Acts 1977, No. 763, see "Publisher's Notes." As to legislative Notes" to § 14-171-204.

#### **CASE NOTES**

Cited: Purvis v. Hubbell, 273 Ark. 330, 620 S.W.2d 282 (1981).

# 14-171-207. Application — Hearings.

(a) After reviewing the applications, and upon reasonable notice to the applicant, the State Board of Finance shall hold a public hearing on

the application.

(b)(1) The State Board of Finance shall give notice of the time, place, and purpose of the public hearing by publication one (1) time in a newspaper of general circulation within the boundaries of the applicant, such publication to be not less than ten (10) days prior to the hearing.

(2) The notice shall describe generally the facilities for which state assistance has been requested and shall contain a brief description of the procedural steps to be taken in connection with the application and

the financing of the facilities.

(c) At the public hearing representatives of the applicant and any other interested persons may appear and present evidence and argument in support of or in opposition to the application, and the State Board of Finance may present additional evidence.

History. Acts 1977, No. 763, § 4; A.S.A. intent of Acts 1979, No. 569, regarding 1947, § 19-5504. Acts 1977, No. 763, see "Publisher's Publisher's Notes." As to legislative Notes" to § 14-171-204.

#### CASE NOTES

**Cited:** Purvis v. Hubbell, 273 Ark. 330, 620 S.W.2d 282 (1981).

# 14-171-208. Application — Determination of eligibility.

(a) After consideration of the application and conclusion of the hearing, the State Board of Finance shall determine whether the

facilities described in the application are eligible facilities.

(b) If the State Board of Finance determines that the facilities described in the application are eligible facilities and that the financing of, expenditures of, or repayment for such eligible facilities through a combination of bonds or other sources of revenue of the applicant and state assistance under this subchapter is in the best interest of the applicant and the state, the application shall be approved; otherwise the application shall be denied.

(c) In determining whether state assistance is in the best interest of the applicant and the state, the State Board of Finance shall consider:

(1) The capacity of the applicant to issue bonds to finance the eligible facilities:

(2) The support or lack of support of the application by citizens and

residents of the applicant;

(3) The amount of additional state sales tax revenues and additional state income tax revenues estimated to be derived and already derived from the eligible facilities; and

(4) The estimated principal and interest requirements for the bonds issued in connection with the eligible facilities or amounts necessary to repay the investment by a city or county in eligible facilities or the expenditures of eligible facilities.

**History.** Acts 1977, No. 763, § 4; 1979, No. 212, § 4; 1979, No. 569, § 3; A.S.A. 1947, § 19-5504; Acts 1993, No. 164, §§ 5, 6

**Publisher's Notes.** As to legislative intent of Acts 1979, No. 569, see "Publisher's Notes" to § 14-171-204.

Amendments. The 1993 amendment, in (b), inserted "expenditures of" and "or other sources of revenue"; and, added "or the expenditures of eligible facilities" at the end of (c)(4).

#### CASE NOTES

**Cited:** Purvis v. Hubbell, 273 Ark. 330, 620 S.W.2d 282 (1981).

## 14-171-209. Determination of additional state sales and income tax revenues from facility.

(a)(1) If tourist meeting facilities are determined to be eligible facilities, the State Board of Finance shall, on the basis of evidence presented to it, estimate the additional state sales tax revenues and additional state income tax revenues to be derived from them.

(2) In the case of tourist meeting facilities, the estimate shall be made on the basis of projected delegate days and estimated delegate

expenditures per day.

(b) If tourist entertainment facilities are determined to be eligible facilities, the State Board of Finance, on the basis of evidence presented to it, shall estimate the additional state sales tax revenues and additional state income tax revenues to be derived from expenditures made by nonresidents of the state based on the projected attendance for the tourist meeting facilities and using the method deemed most reliable by the State Board of Finance.

(c) In the case of either tourist meeting facilities or tourist entertainment facilities, effect shall be given to the investment multiplier, which investment multiplier is determined to be, and which shall be fixed by the State Board of Finance as, not less than two (2) nor more than five

(5).

**History.** Acts 1977, No. 763, § 4; A.S.A. 1947, § 19-5504.

Publisher's Notes. As to legislative

intent of Acts 1979, No. 569, regarding Acts 1977, No. 763, see "Publisher's Notes" to § 14-171-204.

#### **CASE NOTES**

**Cited:** Purvis v. Hubbell, 273 Ark. 330, 620 S.W.2d 282 (1981).

#### 14-171-210. State assistance.

- (a) If the application provided for in §§ 14-171-204 14-171-209 is approved, the State Board of Finance shall fix the amount of state assistance to the city or county to repay its investment or for paying debt service on the bonds issued to finance, in whole or in part, the eligible facilities if requested by the city or county affected, or to pay the cost of expenditures relating to the eligible facilities, and on behalf of the state, shall enter into an agreement providing for the payment of the amount so fixed in quarterly payments and shall certify the amount to the State Treasurer.
- (b) If the city or county has two (2) or more issues of bonds outstanding to finance eligible facilities, the amount of state assistance shall be fixed separately for each issue. If the city or county has issued only one (1) issue of bonds or if only one (1) issue remains to be repaid or if the state assistance is for payment of costs of expenditures of eligible facilities, only one (1) amount of state assistance shall be fixed.
  - (c) The total amount of state assistance shall be fixed as follows:

(1) In the case of tourist meeting facilities and tourist entertainment facilities for which the city or county has issued and has outstanding bonds for the purpose of financing, in whole or in part, the eligible facilities, the total amount of state assistance shall be fixed at not less than one-third (1/3) nor more than two-thirds (2/3) of the additional state sales tax revenues and additional state income tax revenues estimated to be generated by the eligible facilities;

(2) In the case bonds issued to finance the eligible facilities are fully retired or the investment of the city or county of its revenue in the eligible facilities has been repaid with accrued and accruing interest as provided in this subchapter, the total amount of state assistance shall be fixed at not to exceed one-half (½) of the additional state sales tax revenues and additional state income tax revenues estimated to be generated by the eligible facilities to be calculated in the same manner as calculated prior to the bonds issued to finance the eligible facilities being fully retired or the investment of the city or county of its revenues in the eligible facilities being repaid with accrued and accruing interest as provided by this subchapter.

(d) It shall be a condition to any payments under this subchapter that the city or county has issued and has outstanding, or has paid outstanding, bonds for the purpose of financing, in whole or in part, the eligible facilities, but this shall not limit the provisions in this subchapter for repayment of a city or county investment or expenditures,

heretofore made, in eligible facilities.

(e) The payments provided for in this subchapter shall be subject to the approval of and specific appropriation by the General Assembly and shall be for a term of not longer than two (2) years, but may, subject to the approval of and appropriation by the General Assembly, be extended from time to time for additional terms of not to exceed two (2) years each.

**History.** Acts 1977, No. 763, § 4; 1979, No. 212, § 5; 1979, No. 569, § 4; A.S.A. 1947, § 19-5504; Acts 1989, No. 821, § 4; 1993, No. 164, § 7; 1995, No. 1156, § 4; 1997, No. 753, § 4.

Publisher's Notes. As to legislative intent of Acts 1979, No. 569, see "Publish-

er's Notes" to § 14-171-204.

Amendments. The 1993 amendment, in (a), inserted "or to pay the cost of expenditures relating to the eligible facilities" and deleted the comma preceding "on behalf of"; in (b), substituted "has" for "issues" following "if the city or county" in the first sentence and added the second

sentence; rewrote (c); and, in (d), substituted "or has paid outstanding, bonds" for "its, bonds" and inserted "or expenditures"

The 1995 amendment substituted "not to exceed one-half (½)" for "not less than the net operating maintenance cost as last published by the National Institute of Real Estate Management Experience Exchange, which was five dollars (\$5.00) per square foot of facilities per year in 1991, not to exceed two-thirds (¾)" in (c)(2).

The 1997 amendment made no change in (c)(2).

#### CASE NOTES

**Cited:** Purvis v. Hubbell, 273 Ark. 330, 620 S.W.2d 282 (1981).

## 14-171-211. City-County Tourist Facilities Aid Fund — Creation.

There is created and established on the books of the Treasurer of State, Auditor of State, and Chief Fiscal Officer of the State a fund to be known as the City-County Tourist Facilities Aid Fund.

**History.** Acts 1977, No. 763, § 5; 1979, No. 212, § 6; 1979, No. 569, § 5; 1983, No. 356, § 1; A.S.A. 1947, § 19-5505.

## 14-171-212. City-County Tourist Facilities Aid Fund — Transfer of funds.

- (a) The State Treasurer shall monthly, before making the percentage distributions of general revenues as provided by law, deduct from the General Revenue Fund Account of the State Apportionment Fund an amount of moneys necessary to meet the quarterly payments to cities and counties that are parties to an agreement with the state entered into pursuant to §§ 14-171-204 14-171-210 and shall credit them to the City-County Tourist Facilities Aid Fund and shall quarterly pay over the amounts to each city and county, provided that the General Assembly shall have approved such payments and appropriated funds for them.
- (b) The Treasurer of State shall make no deductions or credits pursuant to this section in any biennium for which the General Assembly has not approved payments under this subchapter and appropriated funds for them.

**History.** Acts 1977, No. 763, § 5; 1979, No. 212, § 6; 1979, No. 569, § 5; 1983, No. 356, § 1; A.S.A. 1947, § 19-5505; Acts 1993, No. 164, § 8; 1995, No. 1156, § 5; 1997, No. 753, § 5.

Amendments. The 1993 amendment in (a), substituted "State Treasurer" for "Treasurer of State," and inserted "or in the case ... of each city and county."

The 1995 amendment deleted "or, in the

case of tourist meeting facilities and tourist entertainment facilities for which the bonds issued to finance the eligible facilities are fully retired or the investment of the city or county of its revenues in the eligible facilities has been repaid with accrued and accruing interest as provided

in this subchapter, to the facilities operating board of eligible facilities of each city and county," preceding "provided that" in (a).

The 1997 amendment made no change in (a).

## 14-171-213. City-County Tourist Facilities Aid Fund — Disbursements.

(a) The State Board of Finance shall certify to the State Treasurer the amount of assistance to each city or county, for paying debt service on the bonds issued to finance, in whole or in part, or for the expenditures relating to, the eligible facilities for which the board has, on behalf of the state, entered into an agreement providing for the payment of the amounts so fixed in quarterly payments to each city or county.

(b) Prior to the Treasurer of State disbursing any moneys quarterly as authorized by this subchapter for state assistance, disbursement for the benefit of eligible facilities shall be based upon the latest data available for the scheduled or actual number of national or regional meetings held and estimated or actual numbers of delegates attending

the national or regional meetings.

(c)(1) On or after June 30 of each fiscal year in which payments for state assistance were made, each recipient entity shall certify to the State Board of Finance the actual number of national and regional meetings held, the actual or estimated delegates attended, and such other information as may be requested, based upon available records and data.

(2)(A) Based upon the estimated actual delegate attendance, if it is determined that an underpayment was made to the local entity, then the underpayment shall be paid from the succeeding fiscal year's appropriation.

(B) If it should be determined that overpayments were made to the entity, then the overpayments shall be recovered by reducing the

succeeding fiscal year's entitlement by the overpayment.

**History.** Acts 1977, No. 763, § 5; 1979, No. 212, § 6; 1979, No. 569, § 5; 1983, No. 356, § 1; A.S.A. 1947, § 19-5505; Acts 1993, No. 164, § 9; 1995, No. 1156, § 6; 1997, No. 753, § 6.

Amendments. The 1993 amendment, in (a), substituted "State Treasurer" for "Treasurer of State," inserted "or to the facilities operating board of eligible facilities for each city or county" twice, and inserted "or for the expenditures relating to."

The 1995 amendment, in (a), substituted "Treasurer of State" for "State Treasurer," deleted "or to the facilities operating board of eligible facilities for each city or county" preceding "for paying debt service" and deleted "or to the facilities operating board of eligible facilities for each city or county" from the end.

The 1997 amendment made no change

in (a).

## 14-171-214. City-County Tourist Facilities Aid Fund — Accounting.

Moneys deposited in the City-County Tourist Facilities Aid Fund shall be accounted for so as to determine that the moneys in it being held are paid to each participating city and county.

History. Acts 1977, No. 763, § 5; 1979, No. 212, § 6; 1979, No. 569, § 5; 1983, No. 356, § 1; A.S.A. 1947, § 19-5505.

## 14-171-215. Payments to localities.

(a) Payments of state assistance to cities and counties pursuant to an agreement authorized by § 14-171-210 shall be made by remitting them directly to the trustee for the holders of the bonds issued to finance the eligible facilities, if there are bonds to which such payments are pledged.

(b) The trustee shall apply such state assistance moneys to the payment or redemption of the bonds, and to the payment of interest on

them.

(c) If there are bonds to which the payments are pledged, no more than eighty percent (80%) of the debt service requirements, including the requirements in connection with any redemption of bonds, due on any date shall be paid from moneys derived from state assistance under

this subchapter.

(d) When the bonds issued to finance the eligible facilities are fully retired or the investment of the city or county of its revenues in the eligible facilities has been repaid with accrued and accruing interest as provided in this subchapter, the city or county may continue to apply to the State Board of Finance for continuing state assistance in paying the costs of expenditures relating to the eligible facilities to be used by the city or county for advertising and promotion.

History. Acts 1977, No. 763, § 6; 1979, No. 212, § 7; 1979, No. 569, § 6; A.S.A. 1947, § 19-5506; Acts 1993, No. 164, § 10; 1995, No. 1156, § 7; 1997, No. 753, § 7. **Amendments.** The 1993 amendment

rewrote (d).

The 1995 amendment deleted former

(d)(1) through (3); and substituted "facilities to be used by the city or county for advertising and promotion" for "facilities, to be used by the facilities operating board as follows" in present (d).

The 1997 amendment made no change in (d).

## 14-171-216. Suspension of local tax.

Any city or county entering into an agreement pursuant to § 14-171-210 may provide for suspension, in whole or in part, of the collection of any tax voted for payment of its general obligation bonds issued in accordance with an agreement under § 14-171-210 in any year when moneys derived from state assistance under this subchapter or from other sources are available for payment of all, or a portion of, the debt service on the bonds.

**History.** Acts 1977, No. 763, § 7; A.S.A. 1947, § 19-5507.

## 14-171-217. Pledge of state revenues prohibited.

(a) Nothing in this subchapter shall be construed as authorizing the pledging of the faith and credit of the state or any of its revenues, either for the performance of the obligations of the state under the agreements authorized by §§ 14-171-204 — 14-171-210 or for the payment of bonds

issued pursuant to such agreements.

(b) All payments to cities and counties under agreements entered into in accordance with this subchapter are made subject to specific appropriations for such purpose and nothing in this subchapter, or in any agreement entered into pursuant to this subchapter, shall be construed to require the General Assembly to make any appropriation pursuant to this subchapter, or such agreement, or to prohibit the General Assembly from amending or repealing this subchapter at any time.

**History.** Acts 1977, No. 763, § 8; A.S.A. 1947, § 19-5508.

## CHAPTER 172 HISTORIC DISTRICTS

#### SUBCHAPTER.

- 1. GENERAL PROVISIONS. [RESERVED.]
- 2. CITIES AND TOWNS.

**Cross References.** Historic preservation, § 13-7-101 et seq.

## SUBCHAPTER 1 — GENERAL PROVISIONS

## [Reserved]

## SUBCHAPTER 2 — CITIES AND TOWNS

SECTION. 14-172-201. Title.	SECTION.
14-172-201. Title. 14-172-202. Purpose.	ness required — Definition.
14-172-203. Applicability.	14-172-209. Determination on applica-
14-172-204. Penalty.	tion for certificate.
14-172-205. Enforcement.	14-172-210. Certain changes not prohib-
14-172-206. Historic district commis-	ited.
sions. 14-172-207. Establishment of historic	14-172-211. Interior architectural fea- tures.
districts. 14-172-208. Certificate of appropriate-	14-172-212. Appeal from decision.

Cross References. Building Code for

historic buildings, § 13-7-110.

Effective Dates. Acts 1977, No. 480, § 14: Mar. 17, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is desirable that the historical and cultural heritage of the State of Arkansas be preserved; that it is essential that an agency be created to coordinate and supervise

authority in preserving the historical and cultural heritage of the State; that this Act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

#### RESEARCH REFERENCES

ALR. Statute or ordinance protecting landmarks. 18 ALR 4th 990.

### 14-172-201. Title.

This subchapter shall be known and may be cited as the "Historic Districts Act."

**History.** Acts 1963, No. 484, § 1; A.S.A. 1947, § 19-5001.

#### **CASE NOTES**

Cited: Second Baptist Church ex rel. tle Rock Historic Dist. Comm'n, 293 Ark. Buffington Towers Ltd. Partnership v. Lit- 155, 732 S.W.2d 483 (1987).

## 14-172-202. Purpose.

The purpose of this subchapter is to promote the educational, cultural, economic, and general welfare of the public through the preservation and protection of buildings, sites, places, and districts of historic interest through the maintenance of such as landmarks in the history of architecture of the municipality, of the state, and of the nation, and through the development of appropriate settings for such buildings, places, and districts.

**History.** Acts 1963, No. 484, § 2; A.S.A. 1947, § 19-5002.

#### CASE NOTES

Constitutionality.

This section authorizes the use of historic districts to promote the educational, cultural, and economic welfare of a community, which has been deemed a legitimate use of the police powers by numer-

ous state and federal courts. Second Baptist Church ex rel. Buffington Towers Ltd. Partnership v. Little Rock Historic Dist. Comm'n, 293 Ark. 155, 732 S.W.2d 483 (1987).

## 14-172-203. Applicability.

None of the provisions of this subchapter shall be in operation until and unless:

(1) There shall have been filed, with the clerk of the city, town, or county in which an historic district is contemplated, a petition signed by a majority in numbers of the property owners within the proposed historic district agreeing that their property shall be included in the historic district; or

(2) The boundaries of the proposed historic district are identical to and encompass the area of a National Register of Historic Places Historic District as certified by the United States Department of the

Interior.

**History.** Acts 1963, No. 484, § 10; 1965, No. 170, § 2; 1979, No. 371, § 1; A.S.A. 1947, § 19-5010; Acts 1993, No. 194, § 1.

Amendments. The 1993 amendment substituted "with the clerk of the city, town, or county" for "with the city clerk for the city or town" in (1).

### 14-172-204. Penalty.

- (a) Any person who violates any of the provisions of this subchapter shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500).
- (b) Each day that a violation continues to exist shall constitute a separate offense.

**History.** Acts 1963, No. 484, § 11; A.S.A. 1947, § 19-5011.

## 14-172-205. Enforcement.

The chancery court having jurisdiction over the property in question shall have jurisdiction in equity to enforce the provisions of this subchapter in the rulings issued under it and may restrain by injunction violations of it.

**History.** Acts 1963, No. 484, § 10; 1965, No. 170, § 2; 1979, No. 371, § 1; A.S.A. 1947, § 19-5010.

## 14-172-206. Historic district commissions.

- (a)(1) An historic district commission shall consist of no less than five (5) members nor more than nine (9) members.
  - (A) When the district is located within the boundaries of any city or incorporated town, the commission members shall:
  - (i) Be appointed by the mayor, subject to confirmation by the governing body of the city;
    - (ii) Be electors of the municipality; and
    - (iii) Hold no salaried or elective municipal office.

- (B) When a district is located outside the boundaries of any city or incorporated town, the commission members shall:
- (i) Be appointed by the county judge subject to confirmation by the quorum court;

(ii) Be electors of the county; and

(iii) Hold no salaried or elective county office.

- (2)(A) The appointments to membership on the commission shall be so arranged that the term of at least one (1) member will expire each year, and their successors shall be appointed in a like manner for terms of three (3) years.
  - (B) Vacancies shall be filled in like manner for the unexpired term.

(b) All members shall serve without compensation.

(c) The commission shall elect a chairman and vice chairman annu-

ally from its own number.

(d) The commission may adopt rules and regulations not inconsistent with the provisions of this subchapter and may, subject to appropriation, employ clerical and technical assistants or consultants and may accept money, gifts, or grants and use them for these purposes.

**History.** Acts 1963, No. 484, § 4; A.S.A. **Amendments.** The 1993 amendment 1947, § 19-5004; Acts 1993, No. 194, § 2. rewrote (a)(1).

#### 14-172-207. Establishment of historic districts.

By ordinance adopted by vote of the governing body thereof, any city, town, or county may establish historic districts and may make appropriations for the purpose of carrying out the provisions of this subchap-

ter, subject to the following provisions:

(1)(A)(i) An historic district commission, established as provided in § 14-172-206, shall make an investigation and report on the historic significance of the buildings, structures, features, sites, or surroundings included in any such proposed historic district and shall transmit copies of its report to the Arkansas Historic Preservation Program, a division of the Department of Arkansas Heritage, to the planning commission of the municipality or county, if any, and in the absence of such commission, to the governing body of the municipality or county for its consideration and recommendation.

(ii) Each such body or individual shall give its recommendation to the historic district commission within sixty (60) days from the date

of receipt of the report.

(B)(i) Recommendations shall be read in full at the public hearing

to be held by the commission as specified in this section.

(ii) Failure to make recommendations within sixty (60) days after the date of receipt shall be taken as approval of the report of the commission.

(2)(A) The commission shall hold a public hearing on the establishment of a proposed historic district after giving notice of the hearing by publication in a newspaper of general circulation in the municipality or county once a week for three (3) consecutive weeks, the first

such publication to be at least twenty (20) days prior to the public hearing.

(B) The notice shall include the time and place of the hearing, specify the purpose, and describe the boundaries of the proposed historic district.

(3)(A) The commission shall submit a final report with its recommendations and a draft of a proposed ordinance to the governing body of the municipality or county within sixty (60) days after the public hearing.

(B) The report shall contain the following:

- (i) A complete description of the area or areas to be included in the historic district. Any single historic district may embrace noncontiguous lands;
- (ii) A map showing the exact boundaries of the area to be included within the proposed district;
- (iii) A proposed ordinance designed to implement the provisions of this subchapter; and
- (iv) Such other matters as the commission may deem necessary and advisable.
- (4) The governing body of the municipality or county, after reviewing the report of the commission, shall take one (1) of the following steps:
  - (A) Accept the report of the commission and enact an ordinance to

carry out the provisions of this subchapter;

(B) Return the report to the commission, with such amendments and revisions thereto as it may deem advisable, for consideration by the commission and a further report to the governing body of the municipality or county within ninety (90) days of such return; or

(C) Reject the report of the commission, stating its reasons there-

for, and discharge the commission.

(5) The commission established under the provisions of this subchapter, by following the procedures set out in subdivisions (2) to (4), inclusive, of this section, may, from time to time, suggest proposed amendments to any ordinance adopted under this section or suggest additional ordinances to be adopted under this section.

**History.** Acts 1963, No. 484, § 3; 1965, No. 170, § 1; 1977, No. 480, § 11; A.S.A. 1947, § 19-5003; Acts 1993, No. 194, § 3.

Amendments. The 1993 amendment inserted "or county" following "town" in the introductory language; in (1)(A)(i), in-

serted "or county" twice and substituted "its" for "their" preceding "consideration"; inserted "or county" in (2)(A), (3)(A), the introductory language of (4), and in (4)(B); and made minor punctuation changes.

#### **CASE NOTES**

#### Commission.

In order to avail itself of this subchapter, a municipality must take measures to form an historic district commission to act upon requests for certificates of appropriateness to build, destroy, or modify structures within an historic district. Second Baptist Church ex rel. Buffington Towers Ltd. Partnership v. Little Rock Historic Dist. Comm'n, 293 Ark. 155, 732 S.W.2d 483 (1987).

## 14-172-208. Certificate of appropriateness required — Definition.

(a)(1) No building or structure, including stone walls, fences, light fixtures, steps, and paving or other appurtenant fixtures, shall be erected, altered, restored, moved, or demolished within an historic district until after an application for a certificate of appropriateness as to exterior architectural features has been submitted to and approved by the historic district commission. The municipality or county shall require a certificate of appropriateness to be issued by the commission prior to the issuance of a building permit or other permit granted for purposes of constructing or altering structures. A certificate of appropriateness shall be required whether or not a building permit is required.

(2) For purposes of this subchapter, "exterior architectural features" shall include the architectural style, general design, and general arrangement of the exterior of a structure, including the kind and texture of the building material and the type and style of all windows,

doors, light fixtures, signs, and other appurtenant fixtures.

(b) The style, material, size, and location of outdoor advertising signs and bill posters within an historic district shall also be under the control of the commission.

**History.** Acts 1963, No. 484, § 5; A.S.A. 1947, § 19-5005; Acts 1993, No. 194, § 4.

inserted "or county" in the second sentence of (a)(1).

Amendments. The 1993 amendment

#### **CASE NOTES**

Cited: Second Baptist Church ex rel. tle Rock Historic Dist. Comm'n, 293 Ark. Buffington Towers Ltd. Partnership v. Lit- 155, 732 S.W.2d 483 (1987).

## 14-172-209. Determination on application for certificate.

(a) Within a reasonable time, not to exceed thirty (30) days after the filing of an application for a certificate of appropriateness with the historic district commission, the commission shall determine the property to be materially affected by the application and immediately send by mail, postage prepaid, to the applicant and to the owners of all such properties to be materially affected notice of the hearing to be held by the commission on the application.

(b)(1) The commission may hold such public hearings as are necessary in considering any applications for certificates of appropriateness.

(2) The commission shall act on an application for certificate of

appropriateness within a reasonable period of time.

(3) The commission shall determine whether the proposed construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, or appurtenant fixtures involved will be appropriate to the preservation of the historic district for the purposes of this subchapter, or whether, notwithstanding that it may be inappropriate, owing to conditions especially affecting the structure involved, but not

affecting the historic district generally, failure to issue a certificate of appropriateness will involve a substantial hardship, financial or otherwise, to the applicant, and whether the certificate may be issued without substantial detriment to the public welfare and without substantial derogation from the intent and purpose of this subchapter.

(c)(1) If the commission determines that the proposed construction, reconstruction, alteration, restoration, moving, or demolition is appropriate or is not appropriate, owing to conditions as aforesaid, but that failure to issue a certificate of appropriateness would involve substantial detriment or derogation as aforesaid, or if the commission fails to make a determination within a reasonable time prescribed by ordinance, the commission shall forthwith approve the application and shall issue to the applicant a certificate of appropriateness.

(2) If the commission determines that a certificate of appropriateness should not be issued, it shall place upon its records the reasons for the determination and may include recommendations respecting the proposed construction, reconstruction, alteration, restoration, moving,

or demolition.

(3) The commission shall immediately notify the applicant of the determination.

**History.** Acts 1963, No. 484, § 7; A.S.A. 1947, § 19-5007.

#### RESEARCH REFERENCES

Ark. L. Rev. Watkins, Open Meetings Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 268.

#### CASE NOTES

#### ANALYSIS

Prohibitions.

—In general.

—Parking lots.

Property interest.

#### Prohibitions.

#### -In General.

An historic district commission may prohibit a particular use of property within a district in order to develop an appropriate setting for historical buildings if that use is obviously incongruous with the historic nature of the district. Second Baptist Church ex rel. Buffington Towers Ltd. Partnership v. Little Rock Historic Dist. Comm'n, 293 Ark. 155, 732 S.W.2d 483 (1987).

#### -Parking Lots.

Commission's decision that a parking lot at a particular location would be obviously incongruous with the historical aspects of the district held to be a valid exercise of a legitimate state interest and did not violate petitioners' right to equal protection. Second Baptist Church ex rel. Buffington Towers Ltd. Partnership v. Little Rock Historic Dist. Comm'n, 293 Ark. 155, 732 S.W.2d 483 (1987).

#### Property Interest.

Plaintiffs had no constitutionally protected property interest in the approval of their application for certificate of appropriateness. Roy v. City of Little Rock, 902 F. Supp. 871 (E.D. Ark. 1995).

Given that the commission's approval of an application for a certificate of appropriateness is discretionary, i.e., is not required upon the satisfaction of some rigid statutory framework, it followed that plaintiffs did not possess a legitimate claim of entitlement to certificate of appropriateness they sought; at most they of their application. Roy v. City of Little had an expectation of receiving approval Rock, 902 F. Supp. 871 (E.D. Ark. 1995).

## 14-172-210. Certain changes not prohibited.

Nothing in this subchapter shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in the historic district which does not involve a change in design, material, color, or outer appearance thereof; nor to prevent the construction, reconstruction, alteration, restoration, or demolition of any such feature which the building inspector, or similar agent, shall certify is required for the public safety because of an unsafe or dangerous condition; nor to prevent the construction, reconstruction, alteration, restoration, or demolition of any such feature under a permit issued by a building inspector, or similar agent, prior to the effective date of the establishment of the historic district.

**History.** Acts 1963, No. 484, § 8; A.S.A. 1947, § 19-5008.

### 14-172-211. Interior architectural features.

In its deliberations under this subchapter, the historic district commission shall not consider interior arrangement or use and shall take no action under this subchapter except for the purpose of preventing the construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, or appurtenant fixtures in the historic district obviously incongruous with the historic aspects of the district.

**History.** Acts 1963, No. 484, § 6; A.S.A. 1947, § 19-5006.

#### **CASE NOTES**

Cited: Second Baptist Church ex rel. tle Rock Historic Dist. Comm'n, 293 Ark. Buffington Towers Ltd. Partnership v. Lit- 155, 732 S.W.2d 483 (1987).

## 14-172-212. Appeal from decision.

(a)(1) Any applicant aggrieved by the determination of the historic district commission, within thirty (30) days after the making of the decision, may appeal to the chancery court of the county wherein the property is located.

(2) The court shall hear all pertinent evidence and shall annul the determination of the commission if it finds the reasons given for the determination to be unsupported by the evidence or to be insufficient in law and may make such other decree as justice and equity may require.

(b) The remedy provided by this section shall be exclusive; but the applicant shall have all rights of appeal as in other equity cases.

**History.** Acts 1963, No. 484, § 9; A.S.A. 1947, § 19-5009.

#### **CASE NOTES**

#### Affirmation.

Chancellor's finding that the commission's action was not arbitrary, capricious, and unreasonable was not clearly against the preponderance of the evidence and must be affirmed. Second Baptist Church

ex rel. Buffington Towers Ltd. Partnership v. Little Rock Historic Dist. Comm'n, 293 Ark. 155, 732 S.W.2d 483 (1987).

Cited: Roy v. City of Little Rock, 902 F. Supp. 871 (E.D. Ark. 1995).

## CHAPTER 173

## ECONOMIC DEVELOPMENT GRANTS

SECTION.

14-173-101. Title.

14-173-102. Definitions.

14-173-103. Authority to establish programs.

SECTION.

14-173-104. Grant ordinance.

14-173-105. Application and award.

Effective Dates. Acts 1989, No. 405, § 8: Mar. 8, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly of the State of Arkansas that economic development efforts are best accomplished with the maximum investment of monies at all levels of government and not just by state government; that it is uncertain whether or not local governments in Arkansas are authorized by law to expend local revenues for economic development purposes; and therefore the state needs to

provide a legal mechanism to permit and to encourage local governments to become involved in economic development efforts. Therefore, in order to best address the legal uncertainty and at the same time encourage local governments to involve themselves in economic development efforts to provide jobs for their citizens, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

### 14-173-101. Title.

This chapter shall be known and cited as the "City and County Economic Development Grant Authorization Act".

History. Acts 1989, No. 405, § 1.

### 14-173-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "City" means any city of the first class, any city of the second class, or any incorporated town established by the laws of the State of Arkansas:

(2) "County" means any county in the State of Arkansas;

(3) "Economic development grant program" means a governmental program to award grants to nonprofit corporations to encourage the location, relocation, creation, or development of a business, industry,

manufacturing facility, transportation facility, or other economic unit which creates jobs, employs people, or generates economic activity;

(4) "Grant" means an award or transfer of public funds to a nonprofit corporation under a set of prescribed criteria to accomplish the public purpose of economic development in the city or in the county or in their surrounding areas; and

(5) "Grantee" means the nonprofit corporation to whom the grant is awarded based on the prescribed criteria for awarding the funds under

the establishing ordinance.

History. Acts 1989, No. 405, § 2.

## 14-173-103. Authority to establish programs.

(a) The governing body of any city or the quorum court of any county in Arkansas shall be authorized under this subchapter to establish by ordinance a program for the awarding of grants to any nonprofit corporation, organization, or association to aid or assist or otherwise promote economic development in the city or the county or in their surrounding areas.

(b) The grants shall be paid from funds appropriated by the governing body of the city or the quorum court for the economic development

grant program authorized by this subchapter.

History. Acts 1989, No. 405, § 3.

## 14-173-104. Grant ordinance.

The city or county economic development grant ordinance shall:

(1) Provide for the mayor or county judge or a designee to administer

the grant program authorized under this subchapter;

(2) Require the mayor or county judge to take the necessary action to ensure that the funds are used for the purposes for which the grant is to be awarded and that they are expended in accordance with all state laws and local ordinances and other local procedures and regulations of the awarding government;

(3) Specify the procedure for receiving applications for grants, who is eligible to apply for grants, the economic development goals and objectives of the city or county economic development grant program,

and the procedures for awarding the grants; and

(4) Require the grantee to file a report with the governing body of the city or the quorum court of the county within thirty (30) days after the end of the calender year in which the grant is awarded, explaining the exact amount of expenditures of the grant funds, the purpose for which the grant fund was awarded and expended, and the economic development goals and objectives that were accomplished as a result of the expenditure of the grant funds.

## 14-173-105. Application and award.

(a) The mayor or county judge or a designee shall promulgate the forms to be used in applying for the city or county economic development grant.

(b) All applications shall be submitted as required by the establish-

ing ordinance.

(c) After receipt of the application, the mayor or county judge or a designee shall review the economic development grant applications and shall select the applications by rank order which will best fulfill the economic goals and objectives of the economic development grant program as described by the enabling ordinance. The mayor or county judge or a designee shall then award the economic development grants to the grant applicants based on their rank order on the list of grant applications.

(d) The grants may be awarded until all funds appropriated by the governing body of the city or the county quorum court for grants have

been expended.

History. Acts 1989, No. 405, § 5.

## **CHAPTER 174**

## ECONOMIC DEVELOPMENT TAX

SECTION.

14-174-101. Purpose.

14-174-102. Definitions.

14-174-103. Levy of new taxes permitted.

14-174-104. Levy of sales and use taxes currently authorized.

SECTION.

14-174-105. Disposition of funds.

14-174-106. Public facilities.

14-174-107. Services.

14-174-108. Joint agreements.

Effective Dates. Acts 1993, Nos. 1012 and 1069, § 12: Apr. 12, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that unemployment and economic underdevelopment has reached intolerable levels in certain portions of this state and the state as a whole has been unable to compete with other state's incentive programs for economic development; and that the in-

centives afforded by this Act are critical to the development and expansion of job opportunities in the state. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

## 14-174-101. Purpose.

The purpose of this subchapter is to provide cities and counties with the authority to levy taxes to raise revenue for funding economic development projects to stimulate the local economy and to support private sector job creation opportunities. No funds generated by any tax levied pursuant to this subchapter shall be used as general operating revenue but shall be expended for the purposes prescribed by §§ 14-174-105 — 14-174-107.

**History.** Acts 1993, No. 1012, § 1; 1993, No. 1069, § 1.

#### 14-174-102. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "County" means each of the counties of this state;

- (2) "Municipality" and "city" mean any city or incorporated town in this state;
- (3) "Director" means the Director of the Department of Finance and Administration or any of his authorized agents;
  - (4) "Local government" means city or county.

**History.** Acts 1993, No. 1012, § 2; 1993, No. 1069, § 2.

## 14-174-103. Levy of new taxes permitted.

(a) In addition to all other authority of local governments to levy taxes provided by law, any county, acting through its quorum court, or any municipality, acting through its governing body, may levy any tax. However, no ordinance levying any tax authorized by this subchapter shall be valid until adopted at a special or general election by qualified electors of the city or in the county where the tax is to be imposed, as the case may be. An election will also be required to increase, decrease, or repeal a tax levied pursuant to this subchapter.

(b) Nothing in this subchapter shall be construed to diminish the

existing powers of county governments or city governments.

(c) Nothing in this subchapter shall terminate, repeal, or otherwise affect any other tax levied by a local government.

(d) The local government levying the tax shall collect and administer the tax.

**History.** Acts 1993, No. 1012, § 3; 1993, No. 1069, § 3.

## 14-174-104. Levy of sales and use taxes currently authorized.

(a) The local government may levy a sales or use tax pursuant to any other currently existing statutory authority to levy the tax and provide that the proceeds generated by the tax are to be used for any purpose authorized by this subchapter.

(b) The Department of Finance and Administration will administer and collect any sales or use tax levied under this section if the Department of Finance and Administration would have administered and collected the tax had the tax been levied solely pursuant to the primary statutory authority to levy the tax. The primary statutory

authority to levy the tax is the statute upon which the local government relied for levying the tax, not this subchapter.

**History.** Acts 1993, No. 1012, § 4; 1993, No. 1069, § 4.

## 14-174-105. Disposition of funds.

The taxes levied pursuant to this subchapter may be utilized for construction, reconstruction, demolition, site development, contracts, and related costs associated with the creation, expansion, and rehabilitation of water or sewer systems, streets and roads, bridges, drainage, and other vital public facilities or the establishment and operation of local economic development programs.

**History.** Acts 1993, No. 1012, § 5; 1993, No. 1069, § 5.

### 14-174-106. Public facilities.

To secure, develop, preserve, and maintain the local economy, local governments are authorized to own, acquire, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, contract concerning, or otherwise deal in or dispose of any facility. For the purposes of this section, "facility" means land, interests in land, buildings, furnishings, machinery, equipment, or related improvements necessary or useful for the securing, developing, preserving, or maintaining of economic activity within or near the municipality or county.

**History.** Acts 1993, No. 1012, § 6; 1993, No. 1069, § 6.

### 14-174-107. Services.

To secure professional economic and industrial development management expertise, local governments are authorized to contract for such services with a community-based not-for-profit economic development corporation. For the purposes of this section, "management" means economic and industrial development planning, marketing, advertising, public relations, supervision and operation of industrial parks or other such properties, negotiation of contracts for the sale or lease of such properties, and such other operating expenses as the governing body may deem necessary, convenient, or appropriate. A "community-based not-for-profit economic development corporation" means an organization formed for the same or similar purposes as those contained in this subchapter, which may be a chamber of commerce, industrial development corporation, or similar corporation.

**History.** Acts 1993, No. 1012, § 7; 1993, No. 1069, § 7.

## 14-174-108. Joint agreements.

Any two (2) or more local governments within a single county, or any two (2) or more adjacent counties, may enter into agreements to jointly perform any power granted under this subchapter.

**History.** Acts 1993, No. 1012, § 8; 1993, No. 1069, § 8.

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